TEXAS REGISTER

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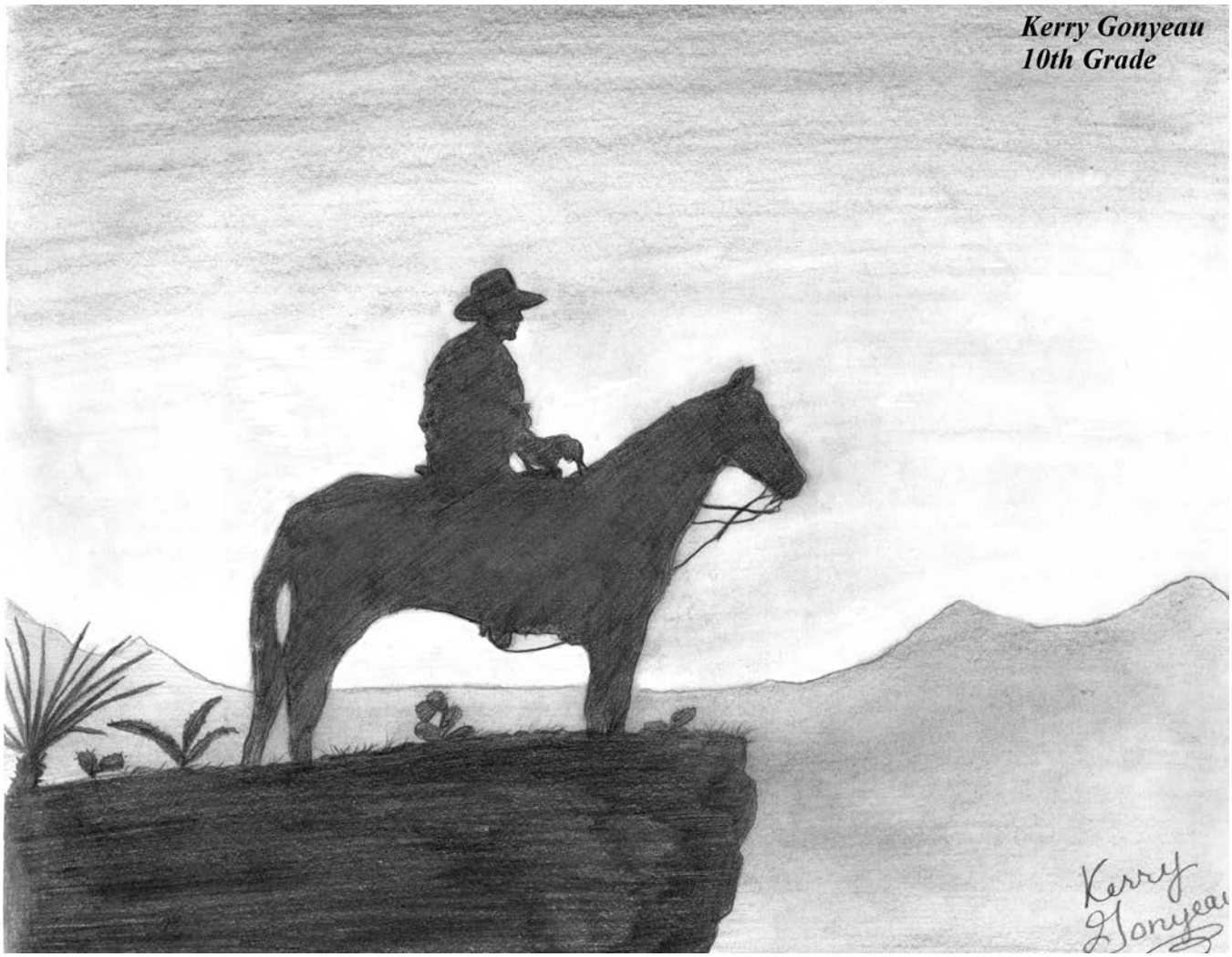

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1119-GA

Requestor:

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

Brazoria County Courthouse

111 East Locust Street, Suite 408A

Angleton, Texas 77515

Re: Whether Family Code section 58.0071 authorizes the custodian of physical records and files in a juvenile case to destroy hard copies in particular instances (RQ-1119-GA)

Briefs requested by May 9, 2013

RQ-1120-GA

Requestor:

The Honorable Brandon Creighton

Chairman, Committee on Federalism & Fiscal Responsibility

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Health & Safety Code §161.123 is preempted by the Federal Cigarette Labeling and Advertising Act or in violation of the First and Fourteenth Amendments to the United States Constitution (RQ-1120-GA)

Briefs requested by May 16, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301524
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 16, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-0998

The Honorable Barbara Cargill

Chair, State Board of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether certain investment decisions for the Permanent School Fund must be made using competitive processes under the State Purchasing and General Services Act (RQ-1092-GA)

S U M M A R Y

Government Code section 2155.063 requires competitive bidding to be used for the purchase of or contract for goods or services. If the State Board of Education purchases investments directly, those purchases generally would not involve contracting for goods or services, as those terms are defined in chapter 2155, and in such instances, the competitive bidding requirement of section 2155.063 would be inapplicable.

The Board must generally use competitive bidding when contracting with investment managers and investment service providers, as those contracts would involve the purchase of services, as that term is defined in chapter 2155. However, the term "service" in chapter 2155 expressly excludes accounting services. To the extent that the Board is contracting for accounting services, the competitive bidding requirement of section 2155.063 would be inapplicable.

Opinion No. GA-0999

The Honorable Jim Murphy

Chair, Partnership Advisory Commission

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Partnership Advisory Commission is subject to the requirements of the Texas Open Meetings Act (RQ-1093-GA)

S U M M A R Y

While the Partnership Advisory Commission's statutorily defined duties do not make it subject to the Open Meetings Act, whether in practice the Commission effectively exercises the kind of policymaking power that renders it subject to the Act is not a question that can be addressed in an attorney general opinion.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201301554
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 17, 2013

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1003, concerning Time Limits for Submitted Claims.

Background and Justification

Most Medicaid providers must submit claims to the Medicaid claims administrator within 95 days from the date of service or the claim will be denied for late filing. However, some entities that provide Medicaid services and must certify the expenditures of state or local funds, such as school districts providing services under the School Health and Related Services (SHARS) Program and County Indigent Health Care Program providers, have 365 days from the date of service to submit a Medicaid claim.

This rule amendment will allow enrolled Medicaid providers under the Blind Children's Vocational Discovery and Development Program (BCVDDP) to submit Medicaid claims for services rendered under the BCVDDP, for which certification of the expenditures of state or local funds is required, within 365 days from the date of service. Currently, the BCVDDP providers are required to submit claims within 95 days from the date of service. The change will make the claim filing time limit requirements for the BCVDDP providers consistent with other entities that provide Medicaid services and must certify the expenditures of state or local funds. The Department of Assistive and Rehabilitative Services is the only provider of BCVDDP services.

Section-by-Section Summary

Proposed §354.1003(a)(5)(K) adds new language that provides an exception to the 95-day deadline for filing claims. The language allows Medicaid claims for services rendered by the enrolled Medicaid providers under the BCVDDP, for which certification of the expenditures of state or local funds is required, to be submitted within 365 days from the date of service.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be no fiscal impact to state or local governments. In addition, Ms. Rymal has determined there will be no costs to persons required to comply with this rule, nor is there an anticipated impact on local economies.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no adverse economic impact on small businesses or micro-businesses associated with the proposed rule as they will not be required to alter their business practices as a result of the rule.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed amended rule is enhanced administrative efficiency.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action or affect private real property in a manner that requires the government to compensate the private real property owner and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Vivian LaFuente, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, MC H390 Austin, Texas 78711; by fax to (512) 249-3707; or by e-mail to vivian.lafuente@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources

Code §32.021 and Texas Government Code §531.021(a), both of which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1003. Time Limits for Submitted Claims.

(a) Claims filing deadlines. Claims must be received by the Health and Human Services Commission (HHSC) or its designee in accordance with the following time limits to be considered for payment. Due to the volume of claims processed, claims that do not comply with the following deadlines will be denied payment.

(1) Inpatient hospital claims. Final inpatient hospital claims must be received by HHSC or its designee within 95 days from the date of discharge or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. In the following situations, hospitals may, and in one instance, must file interim claims:

(A) Hospitals reimbursed according to prospective payment may submit an interim claim after the patient has been in the facility 30 consecutive days or longer.

(B) Children's hospitals reimbursed according to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) methodology may submit interim claims prior to discharge and must submit an interim claim if the patient remains in the hospital past the hospital's fiscal year end.

(2) Outpatient hospital claims must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later.

(3) Claims from all other providers delivering services reimbursed by the Texas Medicaid acute care program must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. This requirement does not apply to providers who deliver long-term care services and are subject to the billing requirements under Title 40 of the Texas Administrative Code.

(4) Providers must adhere to claims filing and appeal deadlines and all claims must be finalized within 24 months of the date of service. Submitted claims that exceed this time frame and do not qualify for one of the exceptions listed in subsection (g) of this section will not be considered for payment by the Texas Medicaid program.

(5) The following exceptions to the claims-filing deadlines listed in this subsection apply to all claims received by HHSC or its designee regardless of provider or service type.

(A) Claims on behalf of an individual who has applied for Medicaid coverage but has not been assigned a Medicaid recipient number on the date of service must be received by HHSC or its designee within 95 days from the date the Medicaid eligibility is added to HHSC's eligibility file. This date is referred to as the "add date."

(B) If a client loses Medicaid eligibility and is later determined to be eligible, or if the Medicaid eligibility is established retroactively, the claim must be received by HHSC or its designee within 95 days from the "add date" and within 365 days from the date of service.

(C) When a service is a benefit of Medicare and Medicaid, and the client is covered by both programs (dually eligible), the claim must first be filed with Medicare. Claims processed by Medicare must be received by HHSC or its designee within 95 days from the date of Medicare disposition or final determination of any Medicare appeal decision.

(D) When a client is eligible for Medicare Part B only, the inpatient hospital claim for services covered as Medicaid only should be submitted directly to Medicaid. The time limits in paragraph (1) of this subsection apply.

(E) When a service is billed to another insurance resource, the claim must be received by HHSC or its designee within 95 days from the date of disposition by the other insurance resource.

(F) When a service is billed to a third party resource that has not responded, the claim must be received by HHSC or its designee within 365 days from the date of service. However, 110 days must elapse after the third party billing before submitting the claim to HHSC or its designee.

(G) When a Title XIX family planning service is denied by Title XX prior to being submitted to Medicaid, the claim must be received by HHSC or its designee within 95 days of the date on the Title XX Denial Remittance Advice.

(H) Claims for services rendered by out-of-state providers must be received by HHSC or its designee within 365 days from the date of service.

(I) Claims for services rendered by the County Indigent Health Care Program, for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within the 365-day federal filing deadline.

(J) Claims for services rendered by school districts under the School Health and Related Services (SHARS) program, for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within the 365-day federal filing deadline or 95 days after the last day of the Federal Fiscal Year (FFY), whichever comes first.

(K) Claims for services rendered by enrolled Medicaid providers under the Department of Assistive and Rehabilitative Services' Blind Children's Vocational Discovery and Development Program (BCVDDP), for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within 365 days from the date of service.

(b) Appeals. All appeals of claims and requests for adjustments must be received by HHSC or its designee within 120 days from the date of the last denial of and/or adjustment to the original claim. Appeals must comply with §354.2217 of this title.

(c) Incomplete Claims. Claims received by HHSC or its designee that are lacking the information necessary for processing will be denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by HHSC or its designee within 120 days from the last denial date.

(d) Extension. If a filing deadline falls on a weekend or holiday, the filing deadline shall be extended to the next business day following the weekend or holiday.

(e) Additional Exceptions to the 95-day Claim Filing Deadline.

(1) HHSC shall consider the following additional exceptions when at least one of the situations included in this subsection exists. The final decision of whether a claim falls within one of the exceptions will be made by HHSC.

(A) Catastrophic event that substantially interferes with normal business operations of the provider, or damage or destruction of the provider's business office or records by a natural disaster, including but not limited to fire, flood, or earthquake; or damage or destruction of the provider's business office or records by circumstances that are clearly beyond the control of the provider, including but not limited to criminal activity. The damage or destruction of business records or criminal activity exception does not apply to any negligent or intentional act of an employee or agent of the provider because these persons are presumed to be within the control of the provider. The presumption can only be rebutted when the intentional acts of the employee or agent leads to termination of employment and filing of criminal charges against the employee or agent; or

(B) Delay or error in the eligibility determination of a recipient, or delay due to erroneous written information from HHSC or its designee, or another state agency; or

(C) Delay due to electronic claim or system implementation problems experienced by HHSC and its designee or providers; or

(D) Submission of claims occurred within the 365-day federal filing deadline, but the claim was not filed within 95-days from the date of service because the service was determined to be a benefit of the Medicaid program and an effective date for the new benefit was applied retroactively; or

(E) Recipient eligibility is determined retroactively and the provider is not notified of retroactive coverage.

(2) Under the conditions and circumstances included in paragraph (1) of this subsection, providers must submit the following documentation, if appropriate, and any additional requested information to substantiate approval of an exception. All claims that are to be considered for an exception must accompany the request. HHSC will consider only the claims that are attached to the request.

(A) All exception requests. The provider must submit an affidavit or statement from the provider stating the details of the cause for the delay, the exception being requested, and verification that the delay was not caused by neglect, indifference, or lack of diligence of the provider or the provider's employee or agent. This affidavit or statement must be made by the person with personal knowledge of the facts.

(B) Exception requests within paragraph (1)(A) of this subsection. The provider must submit independent evidence of insurable loss; medical, accident, or death records; or police or fire report substantiating the exception of damage, destruction, or criminal activity.

(C) Exception requests within paragraph (1)(B) of this subsection. The provider must submit the written document from HHSC, or its designee, that contains the erroneous information or explanation of the delayed information.

(D) Exception requests within paragraph (1)(C) of this subsection.

(i) The provider must submit the written repair statement, invoice, computer or modem generated error report (indicating attempts to transmit the data failed for reasons outside the control of the provider), or the explanation for the system implementation problems. The documentation must include a detailed explanation made by the person making the repairs or installing the system, specifically indicating the relationship and impact of the computer problem or system implementation to claims submission, and a detailed statement explaining why alternative billing procedures were not initiated after the delay in repairs or system implementation was known.

(ii) If the provider is requesting an exception based upon an electronic claim or system implementation problem experienced by HHSC or its designee, the provider must submit a written statement outlining the details of the electronic claim or system implementation problems experienced by HHSC or its designee that caused the delay in the submission of claims by the provider, any steps taken to notify the state or its designee of the problem, and a verification that the delay was not caused by the neglect, indifference, or lack of diligence on the part of the provider or its employees or agents.

(E) Exception requests within paragraph (1)(D) of this subsection. The provider must submit a written, detailed explanation of the facts and documentation to demonstrate the 365-day federal filing deadline for the benefit was met.

(F) Exception requests within paragraph (1)(E) of this subsection. The provider must submit a written, detailed explanation of the facts and activities illustrating the provider's efforts in requesting eligibility information for the recipient. The explanation must contain dates, contact information, and any responses from the recipient.

(f) Exceptions to the 120-day appeal deadline. HHSC shall consider exceptions to the 120-day appeal deadline if the criteria listed in this subsection is met and there is evidence to support paragraphs (1) or (2) of this subsection. The final decision about whether a claim falls within one of the exceptions will be made by HHSC. This is a one-time exception request; therefore, all claims that are to be considered within the request for an exception must accompany the request. Claims submitted after HHSC's determination has been made for the exception will be denied consideration because they were not included in the original request. An exception request must be received by HHSC within 18 months from the date of service in order to be considered. This requirement will be waived for the exceptions listed in paragraphs (2) and (3) of this subsection and subsection (g) of this section.

(1) Errors made by a third party payor that were outside the control of the provider. The provider must submit a statement outlining the details of the cause for the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee, or agent. This affidavit or statement should be made by the person with personal knowledge of the facts. In lieu of the above affidavit or statement from the provider, the provider may obtain an affidavit or statement from the third party payor including the same information, and provide this to HHSC as part of the request for appeal.

(2) Errors made by the reimbursement entity that were outside the control of the provider. The provider must submit a statement from the original payor outlining the details of the cause of the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee or agent. In lieu of the above reimbursement entity's statement, the provider may submit a statement including the same information, and provide this to HHSC as part of the request for appeal.

(3) Claims were adjudicated, but an error in the claim's processing was identified after the 120-day appeal deadline. The error is not the fault of the provider but an error occurred in the claims processing system that is identified after the 120-day appeal deadline has passed.

(g) Exceptions to the 24-month claim payment deadline. HHSC shall consider exceptions to the 24-month claim payment deadline for the situations listed in paragraphs (1) - (3) of this subsec-

tion. The final decision about whether a claim falls within one of the exceptions will be made by HHSC.

(1) Refugee Eligible Status: The payable period for all Refugee Medicaid eligible recipient claims is the federal fiscal year in which each date of service occurs plus one additional Federal Fiscal year. The date of service for inpatient claims is the discharge date.

(2) Medicare/Medicaid Eligible Status: The payable period for Medicaid/Medicare eligible recipient claims filed electronically is 24 months from the date the file is received from Medicare by the claims administrator for Medicaid. The payable period for Medicaid/Medicare eligible recipient claims filed on paper is 24 months from the date listed on the Medicare Remittance Advice.

(3) Retroactive Supplemental Security Income Eligible: The payable period for Supplemental Security Income (SSI) Medicaid eligible recipients when the Medicaid eligibility is determined retroactively is 24 months from the date the Medicaid eligibility is added to the eligibility file. This date is referred to as the "add date."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301494
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning Attendant Compensation Rate Enhancement.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend §355.112 to simplify Attendant Compensation Rate Enhancement reporting requirements for day habilitation services in the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) programs. The proposed amendment also incorporates changes to reflect person first respectful language.

The existing rule at §355.112(v) requires HCS, TxHmL, and ICF/IID providers who contract with a non-related party to provide day habilitation to report job trainer and job coach hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement in unique cost report items. These providers typically pay their day habilitation contractor a set daily or hourly amount for each individual receiving day habilitation services. The detailed information required under §355.112(v) is often not available to the provider who is required to complete the cost report. As a result, HCS, TxHmL, and ICF/IID participation in the Attendant Compensation Rate Enhancement for day habilitation services lags behind participation levels for other programs and services.

HHSC is proposing to reduce reporting challenges for HCS, TxHmL, and ICF/IID providers contracting with non-related parties to provide day habilitation by allowing these providers to report their total contracted day habilitation costs on a single cost report item. HHSC will then allocate a standard percentage of these costs (50 percent) to attendant compensation for purposes of determining compliance with Attendant Compensation Rate Enhancement spending requirements. The standard percentage was developed through analysis of day habilitation costs reported by providers who provide day habilitation in-house or through a contract with a related party.

In addition, HHSC proposes amending §355.112 to incorporate person first respectful language in compliance with Texas Government Code §531.0227 as added by House Bill 1481, 82nd Texas Legislature, Regular Session, 2011.

Section-by-Section Summary

HHSC proposes amendments to §355.112 as follows:

Modify subsection (ff)(1) to limit detailed day habilitation reporting requirements to providers who provide day habilitation in-house and providers who contract with a related party to provide day habilitation.

Modify subsection (ff)(2) to indicate that providers who contract with a non-related party to provide day habilitation may report their payments to the non-related party contractor in a single cost report item and that HHSC will allocate 50 percent of reported payments to the attendant compensation cost area.

Modify subsection (ff)(3) to indicate that providers must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports.

Make changes throughout the section to replace the old title of the ICF/IID program and other wording in the rule with language that is considered person first respectful.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amendment is in effect there will be no fiscal impact to state government. The amendment will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the amendment.

Ms. Rymal anticipates that there will be no economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment should not affect local employment.

Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The proposed amendment does not require any changes in practice or any additional cost to a contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that the amendment will reduce the reporting and documentation burden for providers who participate in the Attendant Compensation Rate Enhancement Program, eliminating disincentives toward participation for providers who contract with non-related parties for the provision of day habilitation services. Additional public benefit will accrue from the elimination of disrespectful language.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone at (512) 491-1179. Written comments on the proposal may be submitted to Ms. Myers by fax to (512) 491-1998; by e-mail to judy.myers@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 85200, Austin, Texas 78708-5200 within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment implements Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are implemented by this proposal.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 40 TAC §9.203 (relating to Definitions)) [~~Persons with Mental Retardation (ICF/MR)~~], Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Integrated Care Management (ICM)-HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); CBA--Assisted Living/Residential Care (AL/RC) programs; and ICM AL/RC are eligible to participate in the attendant compensation rate enhancement. References in this section to CBA program services also apply to the parallel services offered under the ICM program.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to individuals [~~the clients~~] with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/IID [~~ICF/MR~~], DAHS, RC, and CBA AL/RC programs and the HCS Supervised Living (SL)/Residential Support Services (RSS) and HCS and TxHmL Day Habilitation (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) for staff in the ICF/IID [~~ICF/MR~~], DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Mental Retardation Professionals (QMRPs), assistant QMRPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver who is transporting individuals [~~consumers~~] in the ICF/IID [~~ICF/MR~~], DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings.

(4) An attendant also includes a medication aide in the HCS SL/RSS setting and the ICF/IID [~~ICF/MR~~], RC and CBA AL/RC programs.

(5) An attendant also includes direct care workers, direct care trainers and job coaches.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable

to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/IID [~~ICF/MR~~], attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, ICM--HCSS and AL/RC, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement.

(B) For providers delivering services to both RC and CBA AL/RC individuals [~~clients~~] in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/IID [~~ICF/MR~~], HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID [~~ICF/MR~~] program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS' signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting

of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(C) When one or more contracts or, for the ICF/IID [~~ICF/MR~~], HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) When one or more contracts or, for the ICF/IID [~~ICF/MR~~], HCS and TxHmL programs, component codes of a participating provider are [~~is~~] voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/IID [~~ICF/MR~~], HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID [~~ICF/MR~~], HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. For the ICF/IID [~~ICF/MR~~] program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.457 of this title. For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title.

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC individuals [~~clients~~] in the same facility, participation includes both the RC and CBA AL/RC programs and for providers delivering services to both HCS and TxHmL individuals [~~clients~~], participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/IID [~~ICF/MR~~], participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-day habilitation services category and the day habilitation services category as defined in subsection [~~subparagraph~~] (f)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September

1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC; DAHS; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD and by 1.07 for RC; CBA--AL/RC; and ICM AL/RC. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/IID [~~ICF/MR~~] DH, ICF/IID [~~ICF/MR~~] residential services, HCS SL/RSS, HCS DH, HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL community supports, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID [~~ICF/MR~~], the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

(1) ICF/IID [~~ICF/MR~~] providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the nonday habilitation and/or day habilitation services they have selected for participation.

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/IID [~~ICF/MR~~]; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and mul-

tiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC individuals [~~clients~~] in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (l) of this section.

(3) In cases where more than [~~then~~] one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC, or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's next full-year cost report. The request must be in writing and must be received by HHSC Rate Analysis by hand delivery, United State (U.S.) mail, or special mail delivery no later than 30 days after the date on the written notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. The written request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery,

United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification letter indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support an attendant compensation level different from what is indicated in the notification letter will result in a rejection of the request, and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in sub-

section (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(dd) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced attendant compensation rate funds.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) An acceptable Attendant Compensation Report for the reporting period completed in accordance with all applicable rules and instructions was received by HHSC Rate Analysis at least 30 days prior to the date on which HHSC determined how available reinvestment funds would be distributed.

(D) The DADS contract that was in effect during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined and there has been no ownership change from one legal entity to a different legal entity.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) For each qualifying report, HHSC subtracts the attendant compensation revenue per unit of service from the attendant compensation spending per unit of service and determines the number of full levels by which attendant compensation costs exceeded attendant compensation revenues. This number is multiplied by the add-on value of a level during the reporting period and the product is multiplied by the units of service provided during the reporting period as determined by HHSC.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until enhancements are granted within available funds.

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

(ee) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. For the ICF/IID [~~ICF/MR~~], HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC and ICM AL/RC programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) Conditions of participation for day habilitation. The following conditions of participation apply to each ICF/IID [~~ICF/MR~~], HCS and TxHmL provider specifying its wish to have day habilitation services participate in the attendant compensation rate enhancement.

(1) A provider who provides day habilitation in-house or who contracts with a related party to provide day habilitation will report job [~~Job~~] trainer and job coach compensation and hours [~~must be reported~~] on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). [~~This requirement applies to providers who directly provide day habilitation "in-house", providers who contract with a related party to provide day habilitation and providers who contract with a non-related party to provide day habilitation.~~] Day habilitation costs cannot be combined and reported in one cost report item.

(2) A provider who contracts with a non-related party to provide day habilitation will report its payments to the contractor in a single cost report item as directed in the instructions for the cost report or Attendant Compensation Report as described in subsection (h)(2) and (3) of this section. HHSC will allocate 50 percent of reported payments to the attendant compensation cost area for inclusion with other allowable day habilitation attendant costs in order to determine the total attendant compensation spending for day habilitation services as described in subsection (s) of this section.

(3) [~~(2)~~] The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report. [~~This requirement includes ensuring access to records held by the provider, a related-party day habilitation provider and a non-related-party day habilitation provider.~~]

[~~(3) Failure to comply with the requirements of paragraphs (1) and (2) of this subsection will result in recoupment of all attendant compensation rate enhancement funds associated with the day habilitation service for the provider for the reporting period in question.~~]

(4) HHSC will require each ICF/IID [~~ICF/MR~~], HCS and TxHmL provider specifying their wish to have day habilitation services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(gg) New contracts within existing component codes. For ICF/IID [~~ICF/MR~~], HCS and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code's level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(hh) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301495
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

Background and Justification

Section 355.7103 establishes the reimbursement methodology for 24-Hour Residential Child Care (24 RCC). HHSC, under its authority and responsibility to administer and implement rates, proposes to amend §355.7103 to reference the uniform cost report excusal rules.

Normally, all providers are expected to submit a cost report. However, there are circumstances when a provider automatically may be excused from submission of a cost report. Section 355.7103(f)(4) specifies the cost report excusal requirements for the 24 RCC program. In 2012, uniform cost report excusal requirements for all programs, including 24 RCC, were incorporated into §355.105, General Reporting and Documentation Requirements, Methods, and Procedures. The cost report excusal requirements for 24 RCC in §355.7103 are now obsolete and are proposed for removal.

Circumstances in §355.105 under which HHSC may excuse 24 RCC providers from the requirement to submit a cost report include the following:

- if there were no billable services provided during the provider's cost-reporting period;

- if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month;

- if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency;

- if all of the provider's contract(s) required to be included on the cost report have been terminated prior to the cost-report due date;

- if the provider's contract was not renewed;

- if only Basic Level services were provided;

- if the total number of state-placed days (Department of Family and Protective Services (DFPS) days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;

- if the total number of DFPS-placed days was 10 percent or less of the total days of service provided during the cost-reporting period;

- for facilities that provide Emergency Care Services only, if the occupancy rate was less than 30 percent during the cost-reporting period;

- for all other facility types except Child-Placing Agencies and those providing Emergency Care Services, if the occupancy rate was less than 50 percent during the cost-reporting period.

Section-by-Section Summary

The proposed amendment to §355.7103 revises subsection (f)(4) to replace language specifying when a 24 RCC provider is excused from submitting a cost report with a reference to the uniform excusal rules at §355.105.

Fiscal Note

Cindy Brown, Chief Financial Officer for the Department of Family and Protective Services, has determined that during the first five-year period the amendment is in effect there will be no fiscal impact to state government. The amendment will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no economic effect on small businesses and micro-businesses as a result of enforcing or administering the amendment. The proposed amendment does not require any changes in practice or any additional cost to a contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the amendment. The amendment should not affect local employment.

Public Benefit

Ms. McDonald has also determined that, for each of the first five years the amendment is in effect, the expected public benefit is that the amendment will make the rules regarding excusal from cost report submission as consistent as possible and will consolidate them in a single location. This will enable the public to readily find and have a better understanding of the requirements for excusal.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-2865. Written comments on the proposal may be submitted to Ms. Hambrick by fax to (512) 491-1998; by e-mail to sarah.hambrick@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 85200, Austin, Texas 78708-5200 within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties.

The amendment affects Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) The following is the authority and process for determining payment rates:

(1) For payment rates established prior to September 1, 2005, the Department of Family and Protective Services (DFPS; formerly the Department of Protective and Regulatory Services) reviewed payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, DFPS rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates were presented for adoption, DFPS sent rate packets containing the proposed rates and average inflation factor amounts to provider association groups. DFPS also sent rate packets to any other interested party, by written request. Providers who wished to comment on the proposed rates could attend the open meeting and give public testimony. Notice of the open meeting was published on the Secretary of State's web site at http://www.sos.state.tx.us/open. DFPS notified all foster care providers of the adopted rates by letter.

(2) For payment rates established September 1, 2005 and thereafter, the Health and Human Services Commission (HHSC) approves rates that are statewide and uniform. In approving rate amounts HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter. However, HHSC may adjust staff recommendations when HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Reimbursement amounts will be determined coincident with the state's biennium. HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will be furnished to anyone who requests it.

(b) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, DFPS analyzes the most recent statistical data available on expenditures for a child published by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) DFPS excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other DFPS day-care programs.

(B) DFPS includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, DFPS analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a DFPS foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that complete a cost survey because the children they serve are currently assigned levels of care verified by an independent contractor. By September 1, 2001, children served in DFPS specialized foster homes will also be assigned levels of care verified by an independent contractor. All future sample populations completing a one-month foster home cost survey will include both child-placing agency and DFPS specialized foster homes. As referenced in subsection (j) of this section, during the 2004-2005 biennium, when the rate methodology is fully implemented, DFPS specialized foster homes and child-placing agency foster homes will be required to receive at a minimum the same foster home rate as derived by this subsection.

(C) Cost categories included in the one-month foster home cost survey include:

(i) shared costs, which are costs incurred by the entire family unit living in the home, such as mortgage or rent expense and utilities;

(ii) direct foster care costs, which are costs incurred for DFPS foster children only, such as clothing and personal care items. These costs are tracked and reported for the month according to the level of care of the child; and

(iii) administrative costs that directly provide for DFPS foster children, such as child-care books, and dues and fees for associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category and these costs are combined for a total cost per day for each level of care served.

(E) A separate sample population is established for each type of specialized foster home (therapeutic, habilitative, and primary medical). Each level of care maintenance rate is established by the sample population's central tendency, which is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(F) The rates calculated for each type of specialized foster home are averaged to derive one foster care maintenance rate for each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(c) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consider-

ation for child-placing agencies serving Levels of Care 1 through 4 children as follows:

(1) The rate-setting model defined in subsection (g) of this section is applied to child-placing agencies' cost reports to calculate a daily rate.

(2) At a minimum, child-placing agencies are required to pass through the applicable foster home rate derived from subsection (b) of this section to their foster homes. The remaining portion of the rate is provided for costs associated with case management, treatment coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types are included as child-placing agencies and will receive the child-placing agency rate:

(A) child-placing agency;

(B) independent foster family/group home;

(C) independent therapeutic foster family/group home;

(D) independent habilitative foster family/group home; and

(E) independent primary medical needs foster family/group home.

(d) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for residential care facilities serving Levels of Care 1 through 6 as follows:

(1) For Levels of Care 1 and 2, DFPS applies the same rate paid to child-placing agencies as recommended in subsection (c) of this section.

(2) For Levels of Care 3 through 6, the rate-setting model defined in subsection (g) of this section is applied to residential care facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types are included as residential care facilities and will receive the residential care facility rate:

(A) residential treatment center;

(B) therapeutic camp;

(C) institution for mentally retarded;

(D) basic care facility;

(E) halfway house; and

(F) maternity home.

(e) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for emergency shelters as follows:

(1) DFPS analyzes emergency shelter cost report information included within the rate-setting population defined in subsection (f) of this section. Emergency shelter costs are not allocated across levels of care since, for rate-setting purposes, all children in emergency shelters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the total costs are divided by the total number of days of care to calculate a daily rate.

(3) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(4) The emergency shelter rate is established by the population's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(f) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, level of care rates for contracted providers including child-placing agencies, residential care facilities, and emergency shelters are dependent upon provider cost report information. The following criteria applies to this cost report information:

(1) DFPS excludes the expenses specified in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates). Exclusions and adjustments are made during audit desk reviews and on-site audits.

(2) DFPS includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee-for-service Medicaid;

(B) the necessary therapy is not a service allowable under Medicaid;

(C) service limits have been exhausted and the provider has been denied an extension;

(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by DFPS before provision of services.

(3) DFPS may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;

(B) low occupancy;

(C) auditor recommended exclusions;

(D) days of service errors;

(E) providers that do not participate in the level of care system;

(F) providers with no public placements;

(G) not reporting costs for a full year;

(H) using cost estimates instead of actual costs;

(I) not using the accrual method of accounting for reporting information on the cost report;

(J) not reconciling between the cost report and the provider's general ledger; and

(K) not maintaining records that support the data reported on the cost report.

(4) DFPS requires all contracted providers to submit a cost report unless they meet one or more of the conditions in §355.105(b)(4)(D) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). [~~complete the first portion of the cost report including contracted provider identification; preparer/contact person; facility license type; reporting period; days of service by level of care provided during the reporting period; facility capacity and occupancy status; and cost report exemption determination. Providers that meet any one of the following criteria are not required to complete the entire cost report:~~]

[~~(A) total number of days of service for state-placed children equal to or less than 10% of total days of service;~~]

[~~(B) total number of DFPS days of service equal to or less than 10% of total days of service;~~]

[~~(C) no services provided to DFPS children;~~]

[~~(D) services provided to only Level of Care 1 children;~~]

[~~(E) contract with DFPS terminated or was not renewed;~~]

[~~(F) occupancy rate for emergency shelters is less than 30%; or~~]

[~~(G) occupancy rate for all other facility types, except for child-placing agencies, is less than 50%.~~]

[~~(5) The occupancy rate equals the total number of days of service provided during the reporting period divided by the maximum operating capacity. The maximum operating capacity is the number of residents the facility is equipped to serve multiplied by the number of days in the reporting period.~~]

[~~(6) All contracted providers not meeting the exemption criteria defined in paragraph (4) of this subsection are included in the rate-setting population and must complete the entire cost report for rate-setting purposes, including:~~]

[~~(A) all child-placing agencies because they do not report occupancy;~~]

[~~(B) emergency shelters with a 30% or more overall occupancy rate; and~~]

[~~(C) all other facilities with a 50% or more overall occupancy rate.~~]

(g) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, a rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child-placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;

(ii) treatment coordination;

(iii) direct care;

(iv) direct care administration; and

(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period. By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;

(II) treatment planning and coordination;

(III) medical treatment and dental care; and

(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child-placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:
Figure: 1 TAC §355.7103(g)(1)(B)(iv) (No change.)

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(iv) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and res-

idential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

(i) direct care labor;

(ii) total payroll taxes/workers compensation; and

(iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

(A) direct care non-labor for dietary/kitchen;

(B) building and equipment;

(C) transportation;

(D) tax expense; and

(E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

(A) administrative wages/benefits;

(B) administration (non-salary);

(C) central office overhead; and

(D) foster family development.

(4) The allocation methods described in paragraphs (1) - (3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state-placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. DFPS uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to DFPS when the rates are prepared. Upon written request, DFPS will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium.

(k) For the SFY 2004 through 2005, DFPS determines payment rates using the rates determined for SFY 2002 and 2003 from subsections (a) - (h) of this section, with adjustments for the transition from a six level of care system to a four service level system of payment rates.

(l) For the state fiscal year 2006 through 2007 biennium, the 2005 payment rates in effect on August 31, 2005 will be adjusted by equal percentages based on a prorata distribution of additional appropriated funds.

(m) For the state fiscal year 2008 through 2009 biennium, rates are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2007 through August 31, 2009 for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2007 plus 4.3 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2007, through August 31, 2009 for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2007, plus 4.3 percent. Additional appropriated funds remaining after the rate increase for foster homes and CPAs shall be distributed proportionally across general residential operations and residential treatment centers based on each of these provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates.

(n) HHSC may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(o) To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by

the executive director. Rates are subject to adjustment as allowed in subsections (a) and (m) of this section.

(p) Payment rates for psychiatric step-down services are determined on a pro forma basis in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(q) Rates are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2009, for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2009, plus 3.33 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2009, for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2009, plus 2.41 percent, which is equivalent to a 1.33 percent increase for CPA retainage and a 3.33 percent increase in pass-through funds for foster homes. For General Residential Operations (GROs) and Residential Treatment Centers (RTCs), the rates effective September 1, 2009, for each level of service will be equal to the rate paid to GROs and RTCs for that level of service in effect August 31, 2009, plus 9.30 percent. For facilities providing emergency care services, the rate effective September 1, 2009, will be equal to the rate in effect August 31, 2009, plus 8.68 percent. For psychiatric step-down services, the rate effective September 1, 2009, will be equal to the rate in effect on August 31, 2009.

(r) Payment rates for Single Source Continuum Contractors under Foster Care Redesign are determined on a pro forma basis in accordance with §355.105(h) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301496
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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CHAPTER 380. MEDICAL TRANSPORTATION PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes to amend §§380.101, 380.201, 380.203, 380.205, 380.209, 380.301, and 380.401, concerning Definitions of Terms, Eligibility, Program Services, Program Processes, Program Exclusions, Client Rights and Responsibilities, and Individual Volunteer Contractor Participation Requirements. HHSC also proposes new §380.501 and §380.502 in new Subchapter E, concerning Regional Contracted Brokers.

Background and Justification

The Medical Transportation Program (MTP) provides non-emergency medical transportation services to Medicaid clients and those served by the Children with Special Health Care Needs Services and the Transportation for Indigent Cancer Patients programs. House Bill (H.B.) 2136, 82nd Legislature, Regular Session, 2011, amended §531.02414 of the Texas Government Code to require HHSC to adopt rules to ensure the safe and efficient provision of non-emergency transportation services provided under MTP by regional contracted brokers and subcontractors of regional contracted brokers. H.B. 2136 specifies that the rules adopted by HHSC must include minimum standards regarding the physical condition and maintenance of motor vehicles used to transport MTP clients. Additionally, the rules must require regional contracted brokers to verify that motor vehicle operators providing MTP services have a valid driver's license, to check the driving and criminal records for these operators, and to require motor vehicle operators to receive annual training on specific topics.

The proposed amendments and new rules define the term "regional contracted broker" and specify requirements of participation in the MTP as required by H.B. 2136. In addition, the amended rules update references to agencies, delete obsolete citations and definitions, update language to reflect current policy, and clarify requirements for individuals receiving mileage reimbursement under the MTP.

Section-by-Section Summary

Proposed amended §380.101 updates language to include a definition of "regional contracted broker" and "Health and Human Services Commission." Proposed amended §380.101 also deletes obsolete definitions and clarifies existing definitions.

Proposed amended §§380.201, 380.203, 380.205, and 380.209 update outdated language and add references to the Health and Human Services Commission and Individual Transportation Participants.

Proposed amended §380.301 clarifies requirements to reflect current policy and updates obsolete language.

Proposed amended §380.401 updates the rule to reflect current policy, procedure, and participation requirements.

Proposed new §380.501 sets out standards for motor vehicles used to provide transportation under the MTP.

Proposed new §380.502 sets out standards for motor vehicle operators providing transportation under the MTP.

The proposed amended rules include other technical corrections and non-substantive changes throughout to make the rule more understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendments and new rules are in effect there will be no fiscal impact to the state or local governments. Ms. Rymal has also determined that there will be no costs to persons required to comply with these rules and there will be no adverse impact on local economies as a result of these rules.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the proposed amendments and new rules. Transportation service area providers and full risk brokers are already contractually required to adhere to the standards contained in H.B. 2136 and therefore will not incur any additional costs as a result of placing the requirements in rule.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments and new rules are in effect, the public will benefit from the adop-

tion of the rules through the assurance of safe and efficient non-emergency medical transportation under the MTP.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Comments

Written comments on the proposal may be submitted to Nicole Gilmore, Program Specialist, Medical Transportation Program, Texas Health and Human Services Commission, mail code M0209, P.O. Box 149030, Austin, Texas 78703; by fax to (512) 706-4997; or by e-mail at nicole.gilmore@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER A. PROGRAM OVERVIEW

1 TAC §380.101

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

The amendments affect Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§380.101. Definitions of Terms.

The following words and terms, when used in the Medical Transportation Program (MTP) rules, shall have the following meanings, unless the content clearly indicates otherwise.

(1) Abuse--The willful infliction of intimidation or injury resulting in physical harm, pain, or mental anguish.

(2) Adjacent county(ies)--The county or counties that share a common county line or point with the recipient's county of residence.

(3) Advance funds--Funds authorized by the Health and Human Services Commission (HHSC) [~~Regional MTP staff~~] in advance of travel and provided to a recipient or attendant for a medically-necessary health care service.

(4) Ambulance service--A service paid through HHSC [~~the Health and Human Services Commission (HHSC)~~] or its designee in an emergency, or non-emergency situation in which transportation in a vehicle other than an ambulance could endanger the recipient's health.

(5) Attendant--An adult required to accompany a prior authorized MTP recipient under §380.207(4) of this chapter (relating to Program Limitations) or an adult or service animal that accompanies a prior authorized MTP recipient to provide necessary mobility, personal or language assistance to the recipient during the time that transportation and health care services are provided.

[~~(6) Batch--A group of mass-transit tickets or tokens with one unique confirmation number.~~]

[~~(7) Cancellation--Verbal notification from a recipient or a recipient's advocate using the MTP toll free number prior to the scheduled medical transportation service which indicates that the particular service is not needed.~~]

(6) [~~(8)~~] Certification Period--A period of time for which the recipient is certified for service.

(7) [~~(9)~~] Children with Special Health Care Needs (CSHCN)--A [~~department~~] program funded with general revenue and federal funds. Services for eligible children include early identification, diagnosis and evaluation, resulting in early health care intervention.

(8) [~~(10)~~] Contractor--A for-profit business, a non-profit organization, or a governmental unit, including a regional contracted broker, that has entered into a legally binding contract with HHSC [~~the department~~] to provide authorized MTP transportation services, advance funds, meals and/or lodging to prior authorized MTP recipients.

[~~(11) Curb-to-curb service--Transportation from curb at origin to curb at destination. This service includes providing assistance, as required, to passengers entering and exiting the vehicle.~~]

[~~(12) Demand-response--Transportation that involves using contractor dispatched vehicles in response to requests for individual or shared one-way trips.~~]

[~~(13) Department--Texas Department of Health. The State agency that operates the Medical Transportation Program.~~]

(9) [~~(14)~~] Dependent care--Necessary care for a child or an adult with a disability [~~disabled adult~~].

(10) [~~(15)~~] Destination--The place or point to which a recipient has been authorized by MTP to travel.

(11) [~~(16)~~] Door-to-door service--Transportation from the door of the trip origin to the door of the trip destination as authorized by Regional MTP staff. This service includes providing assistance, as required, to passengers entering and exiting the vehicle.

(12) [~~(17)~~] Fraud--Deliberate misrepresentation or intentional concealment of information in order to obtain services or payment for services to which a person or contractor is not entitled.

(13) Health and Human Services Commission (HHSC)--The state agency that operates the Medical Transportation Program.

(14) [~~(18)~~] Health Care Provider's Statement of Need--MTP Form 3113 or equivalent submitted by a health care provider which documents the recipient's need for health care services and/or special transportation accommodations.

(15) [~~(19)~~] Individual Transportation Participant (ITP) [~~Volunteer Contractor (IVC)~~]--An individual who has been approved by HHSC [~~an approved service agreement with the department~~] for mileage reimbursement at a prescribed rate to provide transportation

for a prior authorized MTP recipient to a prior authorized health care service.

(16) [~~(20)~~] Limited Status--A Medicaid recipient's limitation to a designated provider, either a primary care provider or primary care pharmacy, under the lock-in provisions contained in Chapter 354, Subchapter K of this title (relating to Medicaid Recipient Utilization Review and Control). Recipients are limited for specific periods of time as outlined in §354.2405(c) of this title (relating to Utilization Control). [~~--An action taken by the Texas Department of Human Services (TDHS) to limit a Medicaid recipient's choice of health care providers.~~]

(17) [~~(21)~~] Lodging establishment--An establishment such as a hotel, motel, charitable home or hospital that provides overnight lodging.

(18) [~~(22)~~] Mass transit--Transportation that is subsidized by sales taxes or Federal Transit Administration funds and provided to the general public within a specified local area.

(19) [~~(23)~~] Medicaid--A health care program provided to eligible individuals under 42 U.S.C. §1396a *et seq.;* 42 C.F.R. §431.53; Texas Human Resources Code, Chapters 22 and 32.

(20) [~~(24)~~] Medicaid-allowable service--A service covered under the State's Medicaid Plan or a Medicaid waiver. This includes health care services that are provided to the recipient by a charitable organization but not billed to Medicaid as well as value-added services provided by a Medicaid managed care plan to a Medicaid-enrolled member.

(21) [~~(25)~~] Medically-necessary--Services that are:

(A) reasonably necessary to: prevent illness(es) or medical condition(s); maintain function or to slow further functional deterioration; provide early screening, intervention, care, and/or provide care or treatment for eligible recipients who have medical condition(s) that cause suffering or pain, physical deformity or limitations in function, or that threaten to cause or worsen a disability, illness or infirmity, or endanger life;

(B) provided at appropriate locations and at the appropriate levels of care for the treatment of the medical condition(s);

(C) consistent with health care practice guidelines and standards endorsed by professionally recognized health care organizations or governmental agencies;

(D) consistent with the diagnosis(es) of the condition(s); and

(E) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency.

(22) [~~(26)~~] Medical Transportation Program (MTP)--A program which provides prior authorized [~~authorization for~~] non-emergency transportation services to and from covered health care services, based on medical necessity, for categorically eligible Medicaid recipients enrolled in Medicaid, and eligible recipients enrolled in CSHCN, or the Transportation for Indigent Cancer Patients (TICP) program who have no other means of transportation.

(23) [~~(27)~~] Minor--An individual under 18 years of age who has never been married or emancipated by court ruling.

[~~(28) No show--~~]

[~~(A) a recipient who does not respond within ten minutes of the time the contractor arrives at the designated pick-up point and scheduled time and announces its presence; or~~]

[~~(B) a contractor who fails to arrive at the designated pick-up point and time.~~]

[~~(29) One-way trip--Transportation of a passenger from point-of-origin to destination.~~]

[~~(30) Origin--The location at which the contractor is authorized to pick up the recipient.~~]

(24) [~~(31)~~] Passenger assistance--Assistance which enables a recipient to walk, enter or exit a vehicle, or transfer from a wheelchair. This does not include lifting or carrying a person.

(25) [~~(32)~~] Prior authorization--Authorization or approval for the provision of transportation, attendant, advance funds and meals and/or lodging services obtained from Regional MTP staff before the services are rendered.

(26) [~~(33)~~] Prior authorized MTP recipient--A recipient[~~,~~ ~~as~~] authorized by HHSC [~~the department, who has been identified by the Texas Department of Human Services (TDHS)~~] as eligible for Medicaid services under a specific category, or identified by either the CSHCN [~~Children with Special Health Care Needs (CSHCN)~~] or the [~~Transportation for Indigent Cancer Patients (~~] TICP[~~)~~] program[~~,~~] as eligible for program services, who has no other means of transportation to health care services.

[~~(34) Priority Trips--Prior authorized trips that must be provided on the original authorized date and time.~~]

(27) [~~(35)~~] Reasonable transportation--Transportation using the most cost-effective transportation that meets the recipient's medical needs:

(A) within a recipient's local community, county of residence, or county adjacent to a recipient's county of residence where the recipient wishes to maintain an ongoing relationship or establish a relationship with a health care provider of his or her choice;

(B) to and from a county beyond the county adjacent to the recipient's county of residence when determined by HHSC [~~the department~~] to be reasonably close to obtain medically necessary, health program allowable services from a specialist when appropriate medical services are not available as specified in subparagraph (A) of this paragraph; or

(C) to a provider or facility within a designated Medicaid managed care service delivery area.

(28) Regional contracted broker--An entity that contracts with HHSC to provide or arrange for the provision of nonemergency transportation services under the MTP.

[~~(36) Retroactive authorizations--Authorizations provided to eligible recipients and lodging establishments for eligible services which would have been authorized had they been requested prior to the service.~~]

(29) [~~(37)~~] Routine medical transportation--Prior authorized medical transportation trips that do not have priority status to and/or from a facility where health care needs will be met.

[~~(38) Same-day service--An urgent request prior authorized by MTP staff.~~]

(30) [~~(39)~~] Service animal--A trained guide dog, signal dog, or other animal to provide assistance to a specified MTP recipient with a disability.

(31) [~~(40)~~] Sexual harassment--Unwelcome sexual advances, requests for sexual favors, or other unwanted verbal or

physical conduct of a sexual nature directed toward an individual by another individual during the provision of MTP services.

(32) [~~(41)~~] Special medical transportation--Medical transportation to and/or from a recipient's county of residence and beyond the adjacent county, where health care needs will be met and the appropriate health care service(s) are not available locally.

(33) [~~(42)~~] Special needs--A transportation service that requires the use of a vehicle equipped with a ramp or a mechanical lift to provide the recipient with a means of accessing the vehicle.

(34) [~~(43)~~] Transportation for Indigent Cancer Patients (TICP) Program--A state-funded program that provides medical transportation services to individuals diagnosed with cancer or a cancer-related illness and who meet TICP residency and financial criteria.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

1 TAC §§380.201, 380.203, 380.205, 380.209

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

The amendments affect Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§380.201. Eligibility.

(a) The following prior authorized Medical Transportation Program (MTP) recipients are eligible to receive reasonable transportation to health care services if medical necessity exists, no other means of transportation are available, the mode of transportation is the most cost-effective mode available that does not endanger the recipient's health and the facility is reasonably close to the prior authorized health care service that meets the recipient's health care needs:

(1) current Medicaid recipients authorized and identified by the Health and Human Services Commission (HHSC) [~~by the department and identified by the Texas Department of Human Services (TDHS)~~] as eligible for Medicaid services under a specific category;

(2) Children with Special Health Care Needs (CSHCN) [~~CSHCN~~] recipients; and

(3) Transportation for Indigent Cancer Patients (TICP) Program [~~TICP~~] recipients.

(b) [~~Transportation for Indigent Cancer Patients (~~]TICP[~~)~~] - To be eligible for participation in the TICP Program, the individual:

(1) must reside in Webb, Zapata, Starr, Jim Hogg, Hidalgo, Cameron, Willacy, or Nueces County and provide a copy of a federal or state ID (driver's license or identification card) and one of the following as proof of residency:

(A) a copy of a utility bill under the applicant's name [~~copy of federal or state ID (driver's license or identification card)~~]; or

(B) if residing with a family member, a written verification from that family member stating that the applicant resides in the household and proof that household is in an eligible county; [~~copy of utility bill under the applicant's name.~~]

[~~(2) if residing with a family member, shall obtain from the family member, written verification that the applicant resides in the household and provide proof that household is in an eligible county;~~]

(2) [~~(3)~~] must not be eligible for Medicaid;

(3) [~~(4)~~] must not be eligible for CSHCN-CIDC;

(4) [~~(5)~~] must be medically indigent (at or below 100% of federal poverty guidelines). Before program services are provided, the monthly household gross income shall be verified by:

(A) financial information obtained through HHSC [~~the Texas Department of Human Services~~];

(B) check stub or other written verification for each person in the household who is employed. This form must contain the name, address of employer, income and dates covered for each pay period; or

(C) award letter or other written verification of unearned income (such as Social Security, Worker's Compensation, Unemployment or Veteran's Administration benefits);

(5) [~~(6)~~] is permitted the following allowable deductions from the total monthly household gross income:

(A) $120 standard deduction per person in household who is employed (the standard deduction per person will be the rate set by HHSC [~~the Texas Department of Human Services~~)]; and

(B) dependent care:

(i) up to $200 per child under 2 years of age; or

(ii) up to $175 per child 2 years of age and older; [~~.~~]

(6) [~~(7)~~] is not permitted to take deductions on unearned income;

(7) [~~(8)~~] if over the age of 18 and residing with a family member, the family member's household income is not considered. The applicant's gross income, less standard deductions, is used to determine the applicant's eligibility;

(8) [~~(9)~~] has zero income and shall therefore submit written verification from two family members or individuals who can attest that the household receives no monthly earned or unearned income.

Unearned income refers to monetary assistance provided by family, friends, charitable organizations, and such given to the recipient for household expenses;

(9) [~~(10)~~] must provide initial confirmation of cancer or cancer-related diagnosis by a licensed medical physician. The following restrictions apply:

(A) the applicant is eligible for up to 4 diagnostic visits to a licensed medical physician to determine cancer or cancer-related diagnosis if HHSC [~~the department~~] is provided written verification that diagnostic visits are to rule out the possibility of cancer or cancer-related illness; and

(B) confirmation of cancer or cancer-related diagnosis must be provided on or following the last diagnostic visit for MTP services to continue; and

(10) [~~(11)~~] must be accepted for evaluation or treatment by a medical institution in Texas capable of providing quality cancer services.

§380.203. Program Services.

Medical Transportation Program (MTP) services must be prior authorized by Regional MTP staff. MTP services include the following:

(1) reasonable transportation of a prior authorized MTP recipient to and/or from a prior authorized health care facility where health care needs will be met, which includes transportation to and from renal dialysis services for recipients enrolled in the medical assistance program who are residing in a nursing facility;

(2) special medical transportation to a health care facility when one of the following conditions is met:

(A) the services are allowable and the health care provider will not bill Medicaid or another source for the cost of the services; or

(B) the recipient provides Regional MTP staff with a Health Care Provider's Statement of Need or equivalent for review and the service is determined reasonable;[~~.~~]

(3) transportation for an attendant(s)[~~,~~] if the health care provider documents the need, the recipient is a minor, or a language or other barrier to communication or mobility exists that necessitates such assistance;

(4) transportation for a service animal when accompanying a recipient;

(5) retroactive reimbursement for up to three months of reasonable transportation, meals and lodging if the recipient is a new recipient to MTP and was eligible under all program requirements. The retroactive reimbursement process will begin on the date of the request for retroactive reimbursement;

(6) advance funds for an eligible child and attendant(s) when lack of transportation funds will prevent the child from traveling to receive health care services; [~~and~~]

(7) reimbursement or advance funds for an eligible child and attendant(s) for meals and lodging when the health care service requires the child to remain overnight. If the child remains overnight for six consecutive months, the recipient or responsible party must provide proof of residency by providing a[~~:~~]

[~~(A)~~] copy of federal or state ID (driver's license or identification card); and

(A) [~~(B)~~] copy of a utility bill under the recipient's or responsible party's (if recipient is a child) name; or

(B) [~~(C)~~] if residing with a family member, written verification that the applicant resides in the household; and[~~.~~]

(8) partial reimbursement or advance funds for a prior authorized MTP recipient and attendant(s) for transportation beyond the approved destination. Partial reimbursement is limited to the amount that would have been paid to the approved destination for transportation permitted under paragraph (1) of this section.

§380.205. Program Processes.

To ensure transportation for prior authorized Medical Transportation Program (MTP) recipients to a health care facility where health care needs will be met:

(1) a request for routine medical transportation must be received by the Regional MTP staff at least two working days in advance of the recipient's health care service appointment;

(2) a request for special medical transportation must be received by the Regional MTP staff at least five working days in advance of the recipient's health care service appointment;

(3) exceptions to paragraphs (1) and (2) of this section may be granted by the Regional MTP manager or designee when the circumstances have been determined by the Regional MTP manager or designee to be beyond the recipient's control. The exception will be documented in the recipient's record;

(4) recipients with recurring visits to a health care provider may receive multiple mass transit tickets or may have more than one transportation appointment authorized in advance;

(5) an individual transportation participant (ITP) [~~volunteer contractor(s)~~] may receive reimbursement that exceeds the amount paid to other transportation contractors in their area for transportation to a similar facility when determined by the Health and Human Services Commission [~~department~~] as appropriate for the health care service required;

(6) a Transportation for Indigent Cancer Patients Program [~~TICP~~] certification period may be retroactive to the date of the initial request for MTP services if all eligibility requirements are met, and all forms are completed and returned. The duration of the certification period is a maximum of 12 consecutive months and minimum of 60 days; and/or

(7) specific certification periods apply to the following applicants:

(A) applicants on unearned fixed income such as Social Security, workers' [~~worker's~~] compensation, unemployment or U.S. Department of Veterans Affairs benefits can be certified for a 12 month period if there are no anticipated changes in household income;

(B) applicants with earned income can be certified up to an 8-month period if there are no anticipated changes in household income;

(C) applicants whose unearned or earned household income is within 10% of the federal poverty guideline can be certified up to a 6-month period at a time if there are no anticipated changes in household income; or

(D) applicants who have zero income can be certified up to 2 months at a time. Zero income requires written verification from family members or advocates who can attest that the household receives no monthly earned or unearned income.

§380.209. Program Exclusions.

The following transportation services are not covered by the Medical Transportation Program (MTP):

(1) transportation of deceased recipients;

(2) transportation of an individual [~~individuals~~] who does [~~do~~] not qualify for a state or federal medical assistance program served by the MTP, unless that individual is an authorized attendant [~~program~~];

(3) transportation of individuals to services which are not covered by the applicable state or federal medical assistance program under which the recipient qualifies;

(4) advance funds, meals, and/or lodging services to a recipient 21 years of age or older, unless the individual is a Children with Special Health Care Needs [~~CSHCN~~] recipient diagnosed with cystic fibrosis;

(5) reimbursement for additional travel costs when a recipient elects to seek care at a more remote facility that is not supported on a Health Care Provider's Statement of Need, Form 3113 or equivalent and prior authorized by Regional MTP staff;

(6) medical care while recipients are being transported;

(7) emergency or non-emergency ambulance service;

(8) passenger assistance beyond that which is necessary to ensure that recipients enter and leave vehicles safely, unless the contractor's contract states that door-to-door service is provided;

(9) reimbursement for transportation services provided by an individual transportation participant (ITP) [~~volunteer contractor~~] before the date that Regional MTP staff approved the initial request to provide services from the ITP [~~individual volunteer contractor~~], unless an exception for retroactive reimbursement has been made and is documented by the Regional MTP staff; and

(10) transportation services for family members not previously authorized for the specific trip by Regional MTP staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301510
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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SUBCHAPTER C. CLIENT RIGHTS

1 TAC §380.301

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

The amendment affects Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§380.301. Client Rights and Responsibilities.

(a) Recipient Rights.

(1) Nondiscrimination. The recipient has a right to receive services in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§2000d, *et seq.;* §504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794; the Americans with Disabilities Act of 1990, 42 U.S.C.A. §12101, *et seq.;* and all amendments to each, and all requirements imposed by the regulations issued pursuant to these Acts, in particular 45 CFR Part 80 (relating to race, color, national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

(2) Abuse report. Recipients should report verbal or physical abuse or sexual harassment committed by other recipients or passengers, contractor employees, or Health and Human Services Commission (HHSC) [~~department~~] staff to Regional MTP staff or Regional Management staff upon arrival at the recipient's destination.

(3) Denial notification. If a service is denied, Regional MTP staff shall notify the recipient in accordance with Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules) [~~Chapter 1, Subchapter C, §1.41 of this title (relating to Medicaid Uniform Fair Hearings Procedures)~~]. This recipient notification does not apply to transportation services under §380.209 [§~~40.106~~] of this title (relating to Program Exclusions).

(4) Appeal request. A recipient whose services have been denied may request an administrative review by the Regional MTP Manager. A second administrative review may be conducted by the MTP Program Director. If the recipient is still dissatisfied, the recipient may appeal the administrative review decision or the service denial by requesting a fair hearing. A request for a fair hearing must be in writing and mailed or hand-delivered to the appropriate Regional MTP office.

(b) Recipient Responsibilities.

(1) When a recipient or responsible adult requests transportation, he/she must provide Regional MTP staff with the following information:

(A) recipient name, address, and, if available, the telephone number;

(B) Medicaid, Transportation for Indigent Cancer Patients Program or Children with Special Health Care Needs [~~TICP or CSHCN~~] recipient identification number (if applicable) or Social Security number, and date of birth;

(C) name, address, and telephone number of health care provider and/or referring health-care provider;

(D) purpose and date of trip and time of appointment;

(E) affirmation that other means of transportation are unavailable;

(F) special needs, including wheelchair lift or attendant(s);

(G) medical necessity verified by the Health Care Provider's Statement of Need, if applicable; and

(H) affirmation that advance funds are needed in order for the recipient to access health care services.[;]

(2) [(1)] Recipients [recipient] must reimburse HHSC [the department] for any advance funds, and any portion thereof, that are not used for the specific prior authorized service.

(3) [(2)] Recipients must refrain from verbal and/or physical abuse or sexual harassment toward another recipient or passenger, contractor's employees, or HHSC [department] employees while requesting or receiving medical transportation services.

(4) [(3)] Recipients must safeguard all bus tickets and/or tokens from loss and theft and must return unused tickets or tokens to the Regional MTP office issuing the tickets or tokens.

(5) [(4)] Recipients who receive mass-transit bus tickets or tokens must complete HHSC's [the department's] Verification of Travel to Health Care Services by Mass Transit, Form 3111. Recipients must return this verification form prior to their next request for tickets or tokens. A letter from the health care provider verifying delivery of services may be substituted for the disbursement of mass transit tickets or tokens verification form. Exceptions to this documentation may be granted by a Regional MTP Manager or supervisor when circumstances occur that are beyond the recipient's control. Exceptions will be documented in the recipient's record.

(6) [(5)] Recipients must not use authorized medical transportation for purposes other than travel to and from health care services.

(7) [(6)] If the recipient does not need to use the authorized transportation services, the recipient or the responsible adult should contact the Regional MTP staff to cancel the particular trip no less than four hours prior to the time of the authorized trip.

(8) [(7)] Recipients who receive advance funds for meals, lodging, and/or travel must return written documentation from the health care provider [a completed Individual Volunteer Contractor (IVC) Service Record] verifying services were provided, prior to receiving future advance funds [or reimbursements].

(9) [(8)] Recipients must cancel requests for advance funds or lodging when not needed and must refund any disbursed advance funds to HHSC [the department].

(10) [(9)] Recipients must provide appropriate receipts when seeking reimbursement for lodging.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301511
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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SUBCHAPTER D. INDIVIDUAL TRANSPORTATION PARTICIPANT

1 TAC §380.401

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

The amendment affects Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§380.401. Individual Transportation Participant [Volunteer Contractor] Participation Requirements.

(a) To participate in the Medical Transportation Program (MTP), all individual transportation participants (ITP) [volunteer contractors] must:

(1) complete an ITP enrollment application [sign an Individual Volunteer Contractor Agreement] with the Health and Human Services Commission (HHSC) or its designee [department] to acquire participation status; and

(2) have and maintain a current driver's license, current vehicle insurance, current vehicle inspection sticker and current vehicle license tags and meet all other participation requirements [of the individual volunteer contractor agreement to participate as an individual volunteer contractor].

(b) In addition to the requirements in subsection (a) of this section, ITPs applying to receive mileage reimbursement for transporting eligible MTP recipients other than themselves or their family members are subject to the requirements contained in Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment) and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

(c) [(b)] HHSC [The department] may reject any application [request] for participation as an ITP or terminate the participation status of any ITP [in MTP and cancel any existing agreement] at HHSC's sole [the department's] discretion.

(d) To receive mileage reimbursement for a trip, an ITP must return to HHSC or its designee a completed ITP service record (Form H3017).

(e) [(c)] The ITP [Individual Volunteer Contractor] must refund to HHSC [the department] any funds to which the ITP [IVC] is not entitled [to] for any reason.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013

TRD-201301512
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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SUBCHAPTER E. REGIONAL CONTRACTED BROKERS

1 TAC §380.501, §380.502

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

The new rules affect Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§380.501. Standards for Motor Vehicles.

A regional contracted broker, as defined in §380.101 of this title (relating to Definitions of Terms), must ensure the following minimum standards regarding the physical condition and maintenance of motor vehicles used to provide MTP services.

(1) All motor vehicles used to provide MTP services for the regional contracted broker must:

(A) meet or exceed warranty and component standards for both state and federal safety mechanical operating and maintenance standards;

(B) be identified with the transportation provider name and vehicle number using letters that are at a minimum six inches in height; and

(C) be equipped with:

(i) functioning, clean, and accessible seat belts for each passenger seat position that must be stored off the floor when not in use;

(ii) an operating speedometer and odometer;

(iii) working interior lights within the passenger compartment;

(iv) adequate interior sidewall padding and ceiling covering;

(v) two exterior rear view mirrors, one on each side of the vehicle;

(vi) an interior mirror, which should be used for monitoring the passenger compartment;

(vii) a clean interior and exterior (which must be free of broken mirrors or windows, excessive grime, rust, chipped paint, and major dents);

(viii) a functional fire extinguisher (which must be secured within reach of the motor vehicle operator and visible to passengers);

(ix) a first aid kit (which must include at a minimum latex gloves, hazardous waste disposal bags, scrub brush, disinfectant, and deodorizer);

(x) working heating and cooling systems adequate for the heating, cooling, and ventilation needs of both the motor vehicle operator and the passengers; and

(xi) signage posted within the vehicle that reads: "No Smoking, Eating or Drinking." "All passengers must wear seat belts." "Concealed Weapons Prohibited."

(2) All motor vehicles used to provide MTP services for the regional contracted broker must comply with all applicable state and federal laws, including the Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles (36 CFR 1192), Federal Motor Vehicle Safety Standards (49 CFR 571), and Chapter 547 of the Texas Transportation Code.

§380.502. Standards for Motor Vehicle Operators.

For any motor vehicle operator providing or seeking to provide MTP services through the regional contracted broker, the regional contracted broker must:

(1) verify that the motor vehicle operator has a valid driver's license. A motor vehicle operator without a valid driver's license may not provide transportation services under the MTP;

(2) check the driving record information of the motor vehicle operator that is maintained by the Department of Public Safety (DPS) under Chapter 521, Subchapter C, Transportation Code. A motor vehicle operator who does not meet driving history requirements as specified in the contract between the Health and Human Services Commission (HHSC) and the regional contracted broker may not provide transportation services under the MTP;

(3) check the public criminal record information of the motor vehicle operator that is maintained by DPS and made available to the public through the DPS website. A motor vehicle operator who does not meet criminal history requirements as specified in the contract between HHSC and the regional contracted broker may not provide transportation services under the MTP; and

(4) require all motor vehicle operators to receive training on the following topics:

(A) passenger safety (training to occur at least annually);

(B) passenger assistance (training to occur at least annually);

(C) assistive devices, including wheelchair lifts, tie-down equipment, and child safety seats (training to occur at least annually);

(D) non-discrimination, sensitivity, and diversity;

(E) customer service;

(F) defensive driving techniques (training to occur at least every two years);

(G) prohibited behavior by motor vehicle operators, including use of offensive language, use of tobacco, alcohol or drugs, and sexual harassment; and

(H) any other additional training HHSC determines to be necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013

TRD-201301513

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

The Texas Racing Commission proposes an amendment to 16 TAC §311.5 and new §311.112. These sections relate to the categories of licenses and the fees associated with each and to the eligibility requirements for licensure as an Equine Dental Provider. The changes are proposed in response to amendments to the Texas Veterinary Licensing Act by House Bill 414, 82nd Legislative Session, and the adoption of related rules by the Texas State Board of Veterinary Medical Examiners.

The amendment to §311.5 deletes the license category of "Tooth Floater" and adds the new license category of "Equine Dental Provider".

New §311.112 provides that an Equine Dental Provider must be licensed and in good standing with the Texas State Board of Veterinary Medical Examiners.

Chuck Trout, Executive Director, has determined that for the first five-year period the changes are in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the changes are in effect the anticipated public benefit will be to ensure that the Commission's licensing requirements are consistent with the Texas Veterinary Licensing Act and the rules of the Texas State Board of Veterinary Medical Examiners.

The changes will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed changes.

All comments or questions regarding the proposed changes may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Norwood, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §7.02, which requires the Commission to adopt categories for the various occupations licensed under the Act and to specify the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§311.5. License Categories and Fees.

(a) - (c) (No change.)

(d) The fee for an occupational license is as follows:

Figure: 16 TAC §311.5(d)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301507
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 833-6699

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SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.112

The new rule is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §7.02, which requires the Commission to adopt categories for the various occupations licensed under the Act and to specify the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

The new rule implements Texas Revised Civil Statutes Annotated, Article 179e.

§311.112. Equine Dental Provider.

To be eligible to be licensed by the Commission and hold a license as an Equine Dental Provider, an individual must be currently licensed and in good standing with the Texas State Board of Veterinary Medical Examiners.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301508
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

19 TAC §102.1073

The Texas Education Agency proposes an amendment to §102.1073, concerning district awards for teacher excellence. The section establishes procedures and adopts guidelines for the administration of awards for the student achievement program. The proposed amendment would clarify funding provisions for educator award programs.

The Texas Education Code (TEC), Chapter 21, Subchapter O, establishes an educator incentive program that provides funding to districts interested in developing local incentive programs. Through 19 TAC §102.1073, adopted effective May 28, 2008, and amended effective June 24, 2010, and November 28, 2012, the commissioner exercised rulemaking authority to establish and administer the grant award program.

Section 102.1073 states that annual award amounts should be valued at $3,000 or more, unless otherwise determined by the district planning committee. The section specifies that minimum awards must be no less than $1,000 per eligible educator and that districts may increase the combined minimum award amount to no more than $2,000 to maximize the receipt of federal grant funding.

The proposed amendment would clarify funding provisions for educator award programs.

The proposed amendment would have no new procedural and reporting implications. The proposed amendment would have no new locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Moore has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the clarification of funding provisions for educator award programs. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 26, 2013, and ends May 28, 2013. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 26, 2013.

The amendment is proposed under the TEC, §21.702, which requires the commissioner of education by rule to establish an educator excellence awards program under which school districts, in accordance with local awards plans approved by the commissioner, receive program grants from the agency for the purpose of providing awards to district employees; and the TEC, §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Awards Program.

The amendment implements the TEC, §21.702 and §21.707.

§102.1073. District Awards for Teacher Excellence.

(a) - (g) (No change.)

(h) Award payments.

(1) - (2) (No change.)

(3) Annual award amounts should be valued at $3,000 or more, unless otherwise determined by the district planning committee. All eligible educators must have the opportunity to earn minimum awards valued at no less than $1,000 per educator identified under Part I funds. [~~To the extent necessary to maximize receipt of federal grant funding, the combined minimum award may be increased to no more than $2,000.~~] Local decisions regarding award amounts are final and may not be appealed to the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301506
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 475-1497

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.436

The Comptroller of Public Accounts proposes an amendment to §3.436, concerning liquefied gas dealer licenses and operation of unmanned compressed natural gas retail locations. The amendment is necessary to reflect the passage of Senate Bill 20, 82nd Legislature, 2011, which created the "Natural Gas Vehicle Program" to encourage companies with on-road heavy-duty vehicles to either replace the vehicles with natural gas vehicles or repower the vehicles with natural gas engines, and Senate Bill 385, 82nd Legislature, 2011, which created the Alternative Fueling Facilities Program that provides incentives to build refueling stations for alternative fuel fleets.

This section does not reflect current market realities. For example, many refueling stations for alternative fuel vehicles operate as unmanned retail locations, which were not previously addressed in this section. The proposed amendments reflect comptroller policy regarding unmanned compressed natural gas fueling facilities, as well as other related issues. The rule is reti-

tled to include unmanned compressed natural gas retail locations.

Subsection (a) is amended to delete reference to Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L, and to make clear that Tax Code, Chapter 162 definitions apply unless otherwise stated. Subsection (a) is further amended to define the terms "Comptroller's website," "Dealer's license," "Liquefied gas," "Liquefied gas tax decal," and "Unmanned retail location."

Subsection (b) is amended to add the license requirement for operators of unmanned retail locations selling compressed natural gas. The following paragraphs are renumbered.

Subsection (c) is amended for readability and to clarify that the liquefied gas tax applies to motor vehicles registered in a state other than Texas or a country other than the United States.

Subsection (d) is amended to include all non-taxable deliveries of liquefied gas.

New subsection (e) is added to describe the two methods by which an unmanned compressed natural gas retail location may operate. Existing subsection (e) is relettered to (f).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule's provisions to current conditions in this market. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §162.304.

§3.436. Liquefied Gas Dealer Licenses and Operation of Unmanned Compressed Natural Gas Retail Locations [(Tax Code, §§162.302, 162.304, 162.306, and 162.310)].

(a) Definitions. In general, the [This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The] words and terms used in this section have the same meaning as those defined in Tax Code, Chapter 162, unless the context clearly indicates otherwise. The following words and terms, when used in this section, shall have the following meaning.

(1) Comptroller's website--The agency website concerning motor fuels taxes, located at: http://www.window.state.tx.us/taxinfo/fuels/lg.html.

(2) Dealer's license--A permit issued by the comptroller to a person who sells liquefied gas at retail authorizing the person to collect and remit motor fuel taxes. The Texas Application for Fuels Tax License, Form AP-133, is available on the comptroller's website.

(3) Liquefied gas--All combustible gases that exist in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, including natural gas, methane, ethane, propane, butane, or a mixture of those gases, but not including gasoline or diesel fuel.

(4) Liquefied gas tax decal--This term has the meaning given in §3.434 of this title (relating to Liquefied Gas Tax Decal).

(5) Unmanned retail location--A fueling station at which liquefied gas is sold to the public and which is completely unstaffed, meaning that there are no personnel routinely working at the site. The term does not include self-service filling stations at which customers pump their own liquefied gas and have the option of paying an attendant or paying at the pump.

(b) Dealer's license required.

(1) A person making a taxable delivery of liquefied gas described in subsection (c) of this section must secure a dealer's [liquefied gas dealer] license.

(2) The operator of an unmanned retail location making a taxable delivery of compressed natural gas, as described in subsection (c) of this section, or a non-taxable delivery of compressed natural gas, as described in subsection (d) of this section, must secure a dealer's license.

(3) [(2)] A licensed liquefied gas interstate trucker or a liquefied gas interstate trucker registered under a multistate tax agreement (International Fuel Tax Agreement) that maintains bulk storage of liquefied gas must secure a [separate liquefied gas] dealer's license.

(c) Taxable delivery of liquefied gas. A taxable delivery of liquefied gas includes:

(1) delivery [liquefied gas delivered] into the fuel supply tank of an [a motor vehicle described in the definition of] "interstate trucker," as defined in Tax Code, §162.001, [and] that displays a current multistate tax agreement (International Fuel Tax Agreement) decal or that is operated by a licensed [as an] liquefied gas interstate trucker;

(2) delivery [liquefied gas delivered] into the fuel supply tank of a motor vehicle registered [licensed] in a state other than Texas or registered in a country other than the United States; or

(3) delivery [liquefied gas delivered] into the fuel supply tank of a motor vehicle registered [licensed] in the state of Texas [and] that displays a current motor vehicle dealer's liquefied gas tax decal.

(d) Non-taxable delivery of liquefied gas. A non-taxable delivery of liquefied [Liquefied] gas is a delivery [delivered] into the fuel supply tank of a motor vehicle that is: [licensed in Texas and that displays a current liquefied gas tax decal is not a taxable delivery.]

(1) registered in Texas and that displays a current Texas Prepaid Liquefied Gas Tax decal;

(2) exclusively operated by the United States Government;

(3) exclusively operated by a Texas public school district;

(4) exclusively operated by a Texas county;

(5) exclusively operated by a nonprofit electric cooperative corporation organized under Utilities Code, Chapter 161;

(6) exclusively operated by a nonprofit telephone cooperative corporation organized under Utilities Code, Chapter 162; or

(7) exclusively used to provide student transportation for a Texas public school district by a commercial transportation company that has been issued a letter of exception by the comptroller.

(e) Unmanned compressed natural gas retail location. The delivery of compressed natural gas from an unmanned retail location may be made by following the two-pump method or the proprietary card method.

(1) Two-pump method. The two-pump method requires the operator of an unmanned compressed natural gas retail location to provide at least one pump for taxable deliveries, as described in subsection (c) of this section, and at least one pump for non-taxable deliveries, as described in subsection (d) of this section. The operator must have sufficient signage at the unmanned retail location to direct the customer to the appropriate taxable or non-taxable pump.

(A) Taxable pump. The pump or pumps designated to make taxable deliveries of compressed natural gas must:

(i) display in a conspicuous place on the pump a label stating that a delivery from that pump is limited to taxable deliveries, the transaction is being videotaped, and the purchase price includes $0.15 per gallon state tax;

(ii) be equipped with a camera or cameras focused toward the front bumper of the vehicle to capture the vehicle's license plate and the date and time for each delivery. The operator must maintain and make available to the comptroller for review the video for a period of four years; and

(iii) issue to the customer on each delivery a time- and date-stamped receipt with a statement that the price includes $0.15 per gallon state tax.

(B) Non-taxable pump. The pump or pumps designated to make non-taxable deliveries of compressed natural gas must:

(i) display in a conspicuous place on the pump a label stating that a delivery from that pump is limited to non-taxable deliveries, the transaction is being videotaped, and it is unlawful to make a non-taxable delivery into a vehicle registered in Texas that does not display a current Texas Prepaid Liquefied Gas Tax decal (other than vehicles exclusively operated by the United States Government, Texas independent school districts, Texas counties, and Texas nonprofit telephone and electric cooperatives);

(ii) each non-taxable pump must be equipped with a camera or cameras focused toward the passenger side of the front of the vehicle, meaning the lower right corner of the windshield, and the front bumper of the vehicle to capture an image of the Texas Prepaid Liquefied Gas Tax Decal, the vehicle license plate, and the date and time of the delivery. The operator must maintain and make available to the comptroller for review the video for a period of four years; and

(iii) issue to the customer on each delivery a time- and date-stamped receipt that includes a statement that no state tax was collected.

(2) Proprietary card method. The proprietary card method requires the operator of an unmanned compressed natural gas retail location to restrict deliveries to those customers issued a proprietary card by the operator of the unmanned retail location. The proprietary card activates the pump and determines whether the delivery is a taxable delivery, as described in subsection (c) of this section, or a non-taxable delivery, as described in subsection (d) of this section. Deliveries cannot be made without the use of a proprietary card.

(A) Taxable proprietary card. A taxable proprietary card may be issued to customers who are required to pay state tax on deliveries of compressed natural gas. The operator of the unmanned retail location is required to:

(i) have a customer-signed agreement stipulating that deliveries of compressed natural gas will be made only into vehicles described in subsection (c) of this section;

(ii) maintain and make available to the comptroller the customer-signed agreement for a period of four years; and

(iii) issue to the customer on each delivery a time- and date-stamped receipt with a statement that the price includes $0.15 per gallon state tax.

(B) Non-taxable proprietary card. A non-taxable proprietary card may only be issued to customers making non-taxable deliveries. The operator is required to:

(i) verify the customer's Texas Prepaid Liquefied Gas Tax decal through the comptroller's website. The tax-free proprietary card must expire on the ending date of the customer's Prepaid Liquefied Gas Tax Decal;

(ii) have a customer-signed agreement stipulating that deliveries of compressed natural gas will be made only into vehicles described in subsection (d) of this section;

(iii) maintain and make available to the comptroller the customer-signed agreement for a period of four years; and

(iv) issue to the customer on each delivery a time- and date-stamped receipt that includes a statement that no state tax was collected.

(f) [~~(e)~~] Report. Taxable deliveries of liquefied gas must be reported on the Texas Liquefied Gas Dealer Report. Taxable gallons are also reported on the interstate trucker or multistate tax agreement (International Fuel Tax Agreement) reports as taxable purchases. For more information, refer to §3.447 of this title (relating to Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 10, 2013.

TRD-201301456
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.834

The Comptroller of Public Accounts proposes an amendment to §3.834, concerning volunteer fire department assistance fund assessment. The amendment is to update the rule to include language not previously included in relation to recoupment of the assessment, to define acronyms, to clarify a reference to the National Association of Insurance Commissioners (NAIC) Annual Statement, to reformat a portion of the rule, and to clarify definitions.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing clarification to insurers subject to the assessment regarding the manner in which the assessment is to be calculated and the manner in which policyholders subject to recoupment of the assessment are to be notified. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under Tax Code, §111.002 and §111.0022, and Insurance Code, §201.051(b) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Insurance Code, Chapter 2007 addressing the Volunteer Fire Department Assistance Fund assessment.

§3.834. Volunteer Fire Department Assistance Fund Assessment.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual statement--A comprehensive statement, in the format promulgated by the National Association of Insurance Commissioners (NAIC), of an insurer's financial condition, business operations, and activities, required to be filed with state insurance departments and the NAIC.

(2) [~~(1)~~] Insurer--An insurance entity that is authorized to engage in business in this state, including a stock company, mutual, farm mutual, county mutual, Lloyd's plan, or reciprocal or interinsurance exchange, as of the assessment date.

(3) [~~(2)~~] Net direct premium--The total gross direct premium written by an insurer, as reported to the Texas Department of Insurance and reflected [~~TDI~~] on the insurer's NAIC Annual Statement State Page Exhibit for:

(A) policies of:

(i) homeowner's insurance;

(ii) fire insurance;

(iii) farm and ranch owner's insurance;

(iv) private passenger automobile physical damage insurance; and

(v) commercial automobile physical damage insurance; and

(B) the nonliability portion of a commercial multiple peril policy.

(4) [~~(3)~~] Twelve-month period--The time period from January 1 through December 31, which is the same as the tax year and NAIC Annual Statement [~~annual statement~~] period.

(b) Calculation of the assessment. The comptroller will use the following formula, based on premium data provided by the Texas Department of Insurance that was compiled from the NAIC Annual Statements filed by insurers, to calculate the amount of each insurer's assessment:

Figure: 34 TAC §3.834(b) (No change.)

(c) Billing date and due date. The comptroller will bill the assessment on or before May 31. Payment of the assessment is due by August 1.

[~~(1) The comptroller will bill the assessment on or before May 31.~~]

[~~(2) Payment of the assessment is due by August 1.~~]

(d) Enforcement provisions. Tax Code, Title 2, Subtitles A and B, apply to the comptroller's administration, collection, and enforcement of the assessment under Insurance Code, Chapter 2007.

(e) Retaliatory taxes. The assessment may not be included on the retaliatory tax worksheet since insurers may recoup the assessment from policyholders [~~policy holders~~].

(f) Recoupment of assessment. An insurer may recover an assessment under this section as provided under Insurance Code, §2007.005. An insurer that recovers the assessment from its policyholders is required by Insurance Code, §2007.006 to provide notice to each policyholder regarding the amount of the assessment being recovered on the declarations page, the renewal certificate, or a billing statement [~~Chapter 2007~~].

(g) Assessment final date. The amount that is assessed an insurer under Insurance Code, Chapter 2007, is final as of the date the billings are generated by the comptroller. The comptroller will not recalculate the amount due under this section to reflect any amendments to [~~changes in~~] an insurer's Annual Statement [~~Texas net direct premium~~]. The assessment under Insurance Code, Chapter 2007[~~,~~] is not a deficiency determination under Tax Code, §111.008.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301497
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: May 26, 2013
For further information, please call: (512) 475-0387

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34 TAC §3.835

The Comptroller of Public Accounts proposes new §3.835, concerning reporting of unauthorized insurance premium tax by nonadmitted captive insurers. The new section provides information about the unauthorized insurance premium tax, defines terms, and provides information about acceptable methods for allocating premium among states for a multiple state policy and the basis of taxation for unauthorized insurance.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the manner in which nonadmitted captive insurers are to allocate premium for, and pay, insurance premium taxes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002 and §111.0022 and Insurance Code, §201.051(b) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The new section implements Insurance Code, Chapter 226, Subchapter A, dealing with unauthorized insurance.

§3.835. Reporting of Unauthorized Insurance Premium Tax by Nonadmitted Captive Insurers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Captive insurer--An insurance company that is formed for the purpose of insuring the risks of entities that are related to it through common ownership. These may be referred to as single-parent, in-house, or pure captives.

(2) Exempt premium--Premium that is not taxable in this state. Examples include premiums on risks or exposures that are properly allocated to federal waters or international waters; premiums on risks or exposures that are under the jurisdiction of a foreign government; and premiums that are specifically exempt from taxation under the regulations of another state.

(3) Nonadmitted insurer--An insurer who does not hold a certificate of authority in this state.

(4) Preempted premium--Federal preemptions from state taxation exist for premiums on policies that are issued to the following entities:

(A) the Federal Deposit Insurance Corporation, when it is the receiver of a failed financial institution that holds the property being insured. The preemption applies to receiverships only, not to supervision or conservatorships;

(B) federally chartered credit unions; and

(C) the National Credit Union Administration, when acting as conservator or liquidating agent for federally chartered credit unions.

(5) Taxable premium--The total gross amount of consideration paid for insurance coverage provided under the contract or policy, including, but not limited to, premiums, premium deposits, membership fees, assessments, dues, policy fees, or any other consideration for insurance that is required to be paid.

(6) Texas waters--Waters within 10.359 statute miles or nine nautical miles from the Texas coastline.

(b) Properly allocated and apportioned--Premium for a policy that covers risks in Texas and other states or jurisdictions is properly allocated and apportioned when it is divided or distributed to the various states or jurisdictions that are afforded coverage under the policy in accordance with the methods described in this section.

(1) The taxpayer must allocate the premium using the allocation standard that most reasonably and equitably apportions the premium applicable to the risk in Texas, other states, and nontaxable jurisdictions based on the type of policy. For example, an allocation based on the percentage of sales in Texas in relation to sales in other states would be a reasonable allocation for a product liability policy, but an allocation based on the percentage of physical assets in Texas would not.

(2) The allocation standard chosen must be maintained in the policy file at the office of the taxpayer and must be available for inspection upon request by the comptroller or the comptroller's authorized representative for a minimum of four years from the date the tax report is filed.

(3) Acceptable apportionment or premium allocation standards include:

(A) percentage of physical assets in Texas;

(B) percentage of payroll applicable to employees located or conducting business in Texas;

(C) percentage of sales in Texas;

(D) percentage of time insured's conduct or property is exposed to coverage in Texas;

(E) the total insured value of the property that is located in Texas; and

(F) any other method of equitable apportionment that is adequately described by the taxpayer in its records.

(c) Determination of premium tax due.

(1) Nonadmitted captive insurers must report tax to the comptroller on all premium, excluding exempt premium, preempted premium, and premium that is properly allocated and reported to another state, that:

(A) covers risks or exposures located or resident in this state;

(B) is written, procured, or received in this state;

(C) is for a policy negotiated in this state; or

(D) is written for an insured whose home office or state of domicile or residence is located in this state.

(2) In the case of an indemnity policy that reimburses the insured for losses paid, the location of the risk or exposure insured is the location of the insured's home office.

(3) No later than March 1 following the calendar year in which the insurance was effectuated, continued, or renewed, and unless otherwise properly allocated and reported, a nonadmitted captive insurer will pay to the comptroller a tax of 4.85% of the taxable premiums described in paragraph (1) of this subsection. The tax under this section, if not paid when due, is a liability of the insurer, the insurer agent, or the insured, and each party is jointly and severally liable for payment of the tax.

(4) Insurance Code, §101.053(b)(6) exempts from regulation by the Department of Insurance an activity in this state by or on

the sole behalf of a nonadmitted captive insurance company that insures solely:

(A) directors' and officers' liability insurance for the directors and officers of the company's parent and affiliated companies;

(B) the risks of the company's parent and affiliated companies; or

(C) both the individuals and entities described by subparagraphs (A) and (B) of this paragraph.

(5) The regulatory exemption under Insurance Code, §101.053(b)(6) does not exempt the insured or the insurer from payment of an applicable tax on premium.

(6) Premiums on policies for risks in Texas waters are subject to Texas taxation.

(7) All premium taxes are calculated on the total gross premium written for the policy as of the date that coverage becomes effective, except as follows:

(A) A policy that is issued for a term in excess of one year with a fixed premium that is payable annually shall be taxed on the first year's premium at the statutory rate as of the date that the policy is effective. The tax on premiums payable for subsequent years shall be computed at the statutory rate as of the date that such subsequent premiums become due and payable. For taxation purposes, that date is the policy anniversary date.

(B) Premium deposits made on a policy that provides for retrospective premium adjustments are premiums for such policy as of the effective date of the policy, and are taxed accordingly.

(C) Retrospective premium adjustments made under the terms of a policy that require the insured's payment of additional premiums are taxed at the rate originally charged. Retrospective premium adjustments that require the return of a portion of premium or premium deposit are effectuated through a tax refund at the rate originally charged.

(d) Business conducted through the mail or by email. Venue for an act performed by mail, facsimile, electronic mail, or other method is the place where the matter transmitted is delivered and takes effect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 15, 2013.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.72, 83.120

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §§83.10, 83.72, and 83.120 which appeared in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9224).

Filed with the Office of the Secretary of State on April 11, 2013.

TRD-201301475
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: April 11, 2013
For further information, please call: (512) 475-4879

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Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8085, concerning the reimbursement methodology for physicians and other practitioners, with changes to the proposed text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8255). The text of the rule will be republished.

Background and Justification

Section 1202 of the Health Care and Education Reconciliation Act of 2010 (Pub.L. 111-152, 124 Stat. 1029) amended the Patient Protection and Affordable Care Act (PPACA) (Pub.L. 111-148). Section 1202 of the Health Care and Education Reconciliation Act of 2010 requires each state, beginning on January 1, 2013, to set its Medicaid rates equal to the 2013-2014 Medicare rates for certain evaluation and management services and vaccine administration services provided by physicians specializing in family medicine, general internal medicine, or pediatric medicine. These Medicare rates typically are higher than Medicaid rates for the same services. Section 1202 also specifies that, from January 1, 2013, through December 31, 2014, the federal government will reimburse 100 percent of the difference between a state's Medicaid rate in effect on July 1, 2009, and the 2013-2014 Medicare rate.

After HHSC published the text of the proposed rule, the federal Centers for Medicare and Medicaid (CMS) adopted federal rules implementing section 1202 of the Health Care and Education Reconciliation Act. *See* 42 C.F.R. §447.400; Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program, 77 Fed. Reg. 66,670 (Nov. 6, 2012) (to be codified in part at 42 C.F.R. §447.400). The CMS rules require a state to pay the enhanced rate for services provided by physicians specializing in family medicine, general internal medicine, or pediatric medicine, as well as services provided "under the personal supervision" of such physicians, so long as the physician self-attests that he or she (1) is Board certified with one of the listed specialties or subspecialties, or (2) has furnished evaluation and management services and vaccine administration services under particular codes that equal at least 60 percent of the Medicaid codes he or she has billed during the most recently completed calendar year or, for newly eligible physicians, the prior month. 42 C.F.R. §447.400(a).

Comments

The 30-day comment period ended November 17, 2012, during which HHSC received a comment on the rule from the Coalition for Nurses in Advanced Practice, which was neither for nor against the proposed rule but which offered recommended revisions. After the comment period ended, HHSC received a comment from the Texas Medical Association, which also was neither for nor against the proposed rule but which recommended revisions.

Comment: A commenter suggested that the rule as proposed did not allow for circumstances in which, under the CMS rule, a physician may bill for services provided by advanced practice nurses or physician assistants. The commenter also suggested that the rule as proposed precluded reimbursement at the enhanced rate for services provided by an advanced practice nurse or physician assistant even if the services are provided under an eligible physician's direct supervision. The federal rule allows an eligible physician to bill for services provided by a nonphysician if the services have been provided under the physician's "personal supervision." The commenter points out that the CMS rule does not define the term "supervision" (or the phrase "personal supervision"), but the preamble to the federal rule describes permissible services provided by a nonphysician as those in which there has "direct physician involvement in the services provided": this rule assumes a relationship in which the physician has professional oversight or responsibility for the services provided by the practitioners under his or her supervision." 77 Fed. Reg. 66,677. The commenter suggested amending the rule to be consistent with federal law.

Response: HHSC agrees with the commenter's general point and has revised paragraph (5) of the rule to allow payment of the enhanced rate for services provided by advanced practice nurses and physician assistants if the services were provided under an eligible physician's direct supervision. This is consistent with the federal rule, which does not allow payment at the enhanced rate for services provided by "independent practicing nonphysician providers." Consistent with the federal rule, HHSC also deleted the term "licensed midwives" from paragraph (5) of the rule.

Comment: The commenter also recommended two changes to the billing process to improve provider tracking and to ensure enforcement by and consistency among managed care organizations that provide Medicaid services.

Response: HHSC understands these comments to be directed not at this rule but at the claims process. Accordingly, HHSC declines to respond to the comments in this context.

Comment: A commenter suggested, in response to the adoption of the federal rule, that to the extent the proposed rule were inconsistent with the federal rule, the state rule be revised to be consistent.

Response: HHSC agrees and has revised paragraphs (4) and (5) of the rule text accordingly.

In addition to the rule text revisions made in response to the comments, HHSC is making minor changes to the proposed rule text elsewhere in the rule. While PPACA and the Health Care and Education Reconciliation Act do not require these revisions, HHSC is making them to improve transparency. Specifically, in paragraph (2)(E), HHSC is correcting a self-reference from "The Health or Human Services Commission" to "The Health and Human Services Commission." In paragraph (2)(G), HHSC is changing the word "adopt" to "adopts" to agree with the singular subject. In paragraph (4), HHSC is inserting the self-attestation requirement that is in the federal rules implementing section 1202 of the Health Care and Education Reconciliation Act. HHSC also is adding headings to paragraphs (4) and (5) to be consistent with the format of other paragraphs in the rule. In a couple of other places in the rule text, HHSC is correcting inappropriate comma usage. None of these changes are substantial enough to require re-proposing the rule.

HHSC believes the rule, as adopted, is a reasonable means of implementing the federal requirements.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8085. Reimbursement Methodology for Physicians and Other Practitioners.

Reimbursement for physicians and other practitioners.

(1) Introduction. This section describes the Texas Medicaid reimbursement methodology (TMRM) that the Health and Human Services Commission (HHSC) uses to calculate payment for covered services provided by physicians and other practitioners. The TMRM facilitates a prospective payment system that is based on HHSC's determination of the adequacy of access to care.

(A) There is no geographical or specialty reimbursement differential for individual services.

(B) HHSC reviews the fees for individual services at least every two years based upon either:

(i) historical payments, with adjustments, to ensure adequate access to appropriate health care services; or

(ii) actual resources required by an economically efficient provider to provide each individual service.

(C) The fees for individual services and adjustments to the fees must be made within available funding.

(2) Definitions and explanations. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Access-based reimbursement fees (ABRF)--Fees for individual services based upon historical payments adjusted, where HHSC deems necessary, to account for deficiencies relating to the adequacy of access to health care services as defined in subparagraph (B) of this paragraph.

(B) Adequacy of access--Measures of adequacy of access to health care services include the following determinations:

(i) adequate participation in the Medicaid program by physicians and other practitioners; and

(ii) the ability of the eligible Medicaid population to receive adequate health care services in an appropriate setting.

(C) Conversion factor--The dollar amount by which the sum of the three cost component relative value units (RVUs) is multiplied to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is $26.873 for fiscal years 1992 and 1993. HHSC reviews the conversion factor at the beginning of each state fiscal year biennium, with any adjustments made within available funding and based on the adjustments described in subparagraph (D) of this paragraph or such other percentage approved by HHSC. HHSC may develop and apply multiple conversion factors for various classes of service, such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(D) Conversion factor adjustments--If funding is available and adjustments are made to the conversion factor(s), the adjustments may include inflation and/or access-based adjustments.

(i) Inflation adjustment--To account for general inflation, HHSC adjusts the conversion factor by the forecasted rate of change of a specific inflation factor appropriate to physician or other professional services covered by the TMRM, the Personal Consumption Expenditures (PCE) chain-type price index, or some percentage thereof. To inflate the conversion factor for the prospective period, HHSC uses the lowest feasible inflation factor forecast that is consistent with the forecasts of nationally recognized sources available to HHSC at the time of preparation of the conversion factor(s).

(ii) Access-based adjustment--Adjustments to the conversion factor may also be made to ensure adequacy of access as defined in subparagraph (B) of this paragraph.

(E) HHSC--The Health and Human Services Commission or its designee.

(F) Physician-administered drugs or biologicals--

(i) HHSC reimburses fees for physician-administered drugs or biologicals based on one of the following:

(I) Equal to 89.5 percent of average wholesale price (AWP) if the drug or biological is considered a new drug or biological (that is, approved for marketing by the Food and Drug Administration within 12 months of implementation as a benefit of Texas Medicaid); or

(II) Equal to 85 percent of AWP if the drug or biological does not meet the definition of a new drug or biological.

(ii) Fees for biologicals and infusion drugs furnished through an item of implanted durable medical equipment (DME) equal to 89.5 percent of AWP.

(iii) Fees for physician-administered drugs other than biologicals and infusion drugs furnished through an item of implanted DME equal to 106 percent of the average sales price (ASP).

(iv) HHSC may use other data sources to determine Medicaid fees for drugs or biologicals when HHSC determines that AWP or ASP calculations are unreasonable or insufficient.

(G) Relative value units (RVUs)--The relative value assigned to each of the three individual components that comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service. Except as otherwise specified, HHSC bases the RVUs that are employed in the TMRM upon the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC reviews any changes to or revisions of the various Medicare RVUs and, if applicable, adopts adopt the changes as part of the TMRM, within available funding.

(H) Resource-based reimbursement fees (RBRF)--Fees for individual services based upon HHSC's determination of the resources that an economically efficient provider requires to provide individual services. An RBRF is defined mathematically using the following formula: RBRF = (total RVU * CF), where RBRF = Resource-Based Reimbursement Fee for Service; total RVU = Relative Value Unit, and CF = Conversion Factor.

(3) Calculating the payment amounts. The fee schedule that results from the TMRM must be composed of two separate components:

(A) the access-based reimbursement fees; and

(B) the resource-based reimbursement fees. HHSC multiplies the RVU by the conversion factor to produce a reimbursement fee for each individual service.

(4) Temporary enhanced reimbursement for certain specialists. Notwithstanding any contrary provisions, a physician specializing in family medicine, general internal medicine, or pediatric medicine and who meets the self-attestation criteria will receive enhanced payments for certain evaluation and management services and vaccine administration services performed from January 1, 2013, through December 31, 2014, in compliance with federal legislation enacted by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010.

(5) Temporary enhanced reimbursement base rate and eligible provider types. When determining payment rates for providers reimbursed at a percentage of the rate paid to a physician (M.D. or D.O.) for the evaluation and management services and vaccine administration services impacted by paragraph (4) of this section, the base rate to which the percentage is applied is the applicable rate in effect on December 31, 2012. Provider types with rates governed by this paragraph include physician assistants, certified nurse midwives, nurse practitioners, and clinical nurse specialists, as outlined in §§355.8093, 355.8161, and 355.8281 of this chapter (relating to Physician Assistants; Reimbursement Methodology for Midwife Services; and Reimbursement Methodology). These provider types are eligible for the applicable percentage of the enhanced payment described in paragraph (4) of this section when billing under the direct supervision of a provider who is eligible to receive enhanced payments under paragraph (4) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2013.

TRD-201301465

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 30, 2013
Proposal publication date: October 19, 2012
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.5

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, §1.5, concerning Previous Participation Reviews, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 565) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the rule as currently written does not appropriately address the process of previous participation reviews for formula allocated funds. Accordingly, the amended section adds language to address such concerns.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between February 8, 2013 and March 8, 2013. Comments regarding the amendments were accepted in writing and by fax. No comments were received concerning the amendments.

BOARD RESPONSE. The Board approved the final order adopting the amendments on April 11, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301502
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 5, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 475-3916

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CHAPTER 9. TEXAS NEIGHBORHOOD STABILIZATION PROGRAM

10 TAC §§9.1 - 9.8

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 9, §§9.1 - 9.8, concerning Texas Neighborhood Stabilization Program, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1486) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will eliminate redundancy as Neighborhood Stabilization contracts are subject to other provisions of: 10 TAC Chapter 10, Uniform Multifamily Rules; Chapter 20, Single Family Programs Umbrella Rule; and Chapter 29, Texas Single Family Neighborhood Stabilization Rule.

The Department accepted public comments between March 8, 2013 and April 8, 2013. Comments regarding the repeal could be submitted in writing and by fax. No comments were received concerning the repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2013.

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Timothy K. Irvine
Executive Director
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CHAPTER 25. COLONIA SELF-HELP CENTER PROGRAM RULE

10 TAC §25.5

The Texas Department of Housing and Community Affairs (the "Department") adopts an amendment to 10 TAC Chapter 25, §25.5, concerning the Colonia Self-Help Center Program Rule, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 568) and will not be republished.

REASONED JUSTIFICATION. The Department finds that an amendment was needed in order to correct a cross-reference that was wrong. Accordingly, the amendment provides a correction to cross-reference §25.9 of Chapter 25, instead of §25.8.

The Department accepted public comments between February 8, 2013 and March 1, 2013. Comments regarding the amendment were submitted in writing and by fax. No comments were received concerning the amendment.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the amendment is adopted pursuant to Texas Government Code, Chapter 2306, Subchapter Z, which specifically authorizes the Department to administer the Colonia Self-Help Center Program. The adopted amendment affects no other code, article, or statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301500
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 5, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 475-3916

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER B. ACCESSIBILITY REQUIREMENTS

10 TAC §60.209

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 60, Subchapter B, §60.209, concerning Reasonable Accommodations, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 569) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the rule as currently written conflicts with the accessibility standards prescribed under state law. Accordingly, the amendment, by removing subsection (h), provides clarity, alignment and consistency.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comments between February 8, 2013 and March 8, 2013. Comments regarding the amendment were accepted in writing and by fax. No comments were received concerning the amendment.

BOARD RESPONSE. The Board approved the final order adopting the amendment on April 11, 2013.

STATUTORY AUTHORITY. The amendment is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2013.

TRD-201301501
Timothy K. Irvine
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For further information, please call: (512) 475-3916

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 4. DISCRETE EMISSION CREDIT BANKING AND TRADING

30 TAC §101.379

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §101.379 *with changes* to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8718).

If adopted, the amended §101.379 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

The Electric Reliability Council of Texas, Inc. (ERCOT) manages the electrical grid within the ERCOT region of Texas, with oversight by the Public Utility Commission of Texas (PUCT). On March 22, 2012, the PUCT repealed 16 TAC §25.507, to replace the Emergency Interruptible Load Service (EILS) program with the Emergency Response Service (ERS) program (new 16 TAC §25.507). Like the EILS program, the new ERS program is designed to help decrease the likelihood of requiring firm load shedding (i.e., rolling black-outs) during an ERCOT-declared energy emergency by decreasing the power demand on the electrical grid. Subsequent changes to ERCOT's Nodal Protocols reflecting the new ERS program became effective on June 1, 2012.

On December 10, 2008, the commission adopted the amendment to §101.379 to restrict the use of discrete emissions reduction credits (DERCs) in the Dallas-Fort Worth 1997 eight-hour ozone nonattainment area (DFW area) to a level consistent with the attainment and maintenance of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The rule requires an annual review of the DFW area DERC program to determine the flow control limit and apportion available DERCs for potential use. The rule also provides an exemption from the DFW flow control limit for DERCs used in response to an ERCOT-declared emergency situation and references the specific ERCOT protocols that detail the emergency notice. The existing rule references a previous version of the ERCOT protocols, which could potentially cause confusion for regulated entities and delay the processing of DERC usage requests. The adopted rulemaking updates §101.379 to reference the version of the ERCOT protocols effective on June 1, 2012.

The amendment to §101.379 is adopted concurrently with the amendment to 30 TAC §117.10 that will be published in a separate rulemaking in this issue of the *Texas Register.*

Section Discussion

The commission revises §101.379(c)(2)(D) to reference the version of the ERCOT Protocols effective on June 1, 2012. Additionally, in response to ERCOT's comments on this rulemaking, the commission is revising §101.379(c)(2)(D) to also include operations in response to an ERCOT energy emergency alert. The commission is making this change to address situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an energy emergency alert.

Final Regulatory Impact Analysis

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The adopted rule implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not

free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the adopted rulemaking is to update references to the ERCOT protocols in §101.379 to be consistent with §117.10.

While the adopted rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP were considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation. *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) *superseded by statute on another point of law,* Tax Code §112.108, Other Actions Prohibited, *as recognized in, First State Bank of Dumas v. Sharp,* 863 S.W.2d 81, 83 (Tex. App. Austin 1993, no writ); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).)

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Commn on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). The specific intent of the adopted rulemaking is to update references to the ERCOT protocols in §101.379 to be consistent with §117.10. This adoption, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law, but does not exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this adopted rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply and a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is an update to Chapter 101, Subchapter H to ensure consistency with ERCOT's new ERS program. This rule is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of electric generators in certain limited emergency situations. Furthermore, the rulemaking benefits the public by potentially decreasing the likelihood of requiring firm load shedding (i.e., rolling black-outs) when additional control measures are needed to achieve or maintain attainment of the federal air quality standards through the use of electric generators. The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rule is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (§501.12(1)). The CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (§501.32). The adopted rulemaking does not increase emissions of air pollutants and is therefore consistent with the CMP goal in §501.12(1) and the CMP policy in §501.32.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited comment on the consistency of this rulemaking during the public comment period. The commission received no comments on the consistency of this rulemaking.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendment will not require any changes to federal operating permits.

Public Comment

The commission scheduled a public hearing in Austin on November 28, 2012. However, the hearing was not officially opened because no one registered to provide comments. The public comment period closed on December 5, 2012. The commission received comments from Blue Sky Environmental LLC (Blue Sky), EnerNOC, Inc. (EnerNOC), EPA, and ERCOT.

Response to Comments

Comment

Blue Sky, EnerNOC, EPA, and ERCOT expressed support for the proposed revisions to §101.379(c)(2)(D).

Response

The commission appreciates the support.

Comment

ERCOT commented that if system conditions deteriorate too rapidly it might not be possible to issue an emergency notice prior to declaring an energy emergency alert and subsequently deploying ERS. ERCOT recommended the commission amend §101.379(c)(2)(D) to refer to ERCOT's dispatch of ERS rather than the issuance of an emergency notice. ERCOT recommended that the commission reference the PUCT's ERS rule in 16 TAC §25.507 rather than the ERCOT Nodal Protocols referenced in the proposed rules. ERCOT expressed concern that the frequent revisions to the ERCOT Nodal Protocols could create confusion as to the applicability of §117.10(15)(A)(ii) and §101.379(c)(2)(D). ERCOT suggested the commission could more easily monitor the infrequent changes to the PUCT rules than the numerous ongoing proposals to revise the ERCOT Nodal Protocols referenced in the proposed rules.

Response

The intent of §101.379(c)(2)(D) is to provide electric generating facilities that are subject to the DERC flow control limit specified in §101.379(c)(2)(A) a temporary exemption from the DERC flow control limit. Limiting the definition of an ERCOT-declared emergency solely to deployment of the ERS will exclude electric generating facilities from being temporarily exempt from the DERC flow control limit when required to operate in an emergency situation in which the safety or reliability of the ERCOT system is compromised or threatened, as determined by ERCOT. Since the provision in §101.379(c)(2)(D) affects sources that are likely not participating in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency, it

is necessary for the commission to retain the reference to emergency notice. Additionally, in response to ERCOT's comments the commission is revising §101.379(c)(2)(D) to also include operations in response to an ERCOT energy emergency alert. The commission is making this change to ensure the definition of an ERCOT-declared emergency includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an energy emergency alert.

The commission is aware that the ERCOT Nodal Protocols references in §101.379(c)(2)(D) are frequently revised and have even been revised since the commission proposed this rulemaking in October 2012. Since the provision in §101.379(c)(2)(D) affects sources that are likely not participating in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency, it is not appropriate for the commission to reference the PUCT's ERS rule in 16 TAC §25.507. The commission respectfully declines to make the suggested change.

Comment

To account for emergency demand response programs initiated by Texas utilities that are experiencing voltage reductions, Blue Sky and EnerNOC recommended expanding the term ERCOT-declared emergency in §101.379(c)(2)(D) to also include utility-declared emergencies.

Response

The purpose of this rulemaking is not to redefine emergency situation but merely to update §101.379 to reference the version of the ERCOT protocols effective on June 1, 2012. The commission does not agree that an emergency situation should include operations that occur in response to a utility-declared emergency. The suggested change would effectively decrease the stringency of the existing rules by expanding the scope of the current definition to include additional situations that would not currently be considered emergency situations. Because the EPA has approved the existing rules as part of the SIP, the suggested expansion of the definition could be considered backsliding and result in the EPA's disapproval of the rulemaking. As discussed elsewhere in the Response to Comments section of the preamble, the commission is also revising the proposed rule language to include operations that are in direct response to an instruction by ERCOT during the period of an ERCOT energy emergency alert. The commission makes no change in response to these comments.

Comment

EPA stated that the current DERC rules in §101.379 establish the DERC flow-control mechanism to support attainment of the 1997 eight-hour ozone standard. The EPA commented it has since promulgated a more stringent ozone standard. On March 27, 2008, and on April 30, 2012, the EPA designated a new ten-county area as the 2008 Dallas-Fort Worth ozone nonattainment area. EPA also commented that the commission will need to review the technical basis for the DERC flow control in §101.379 and update as necessary to reflect the most current ozone standard as part of its attainment planning.

Response

The scope of this rulemaking is limited to updating the reference to the ERCOT protocols and therefore evaluating the technical basis of the DERC flow control for the 2008 ozone standard is beyond the scope of this rulemaking. However, the commission may consider the DERC flow control requirement as part of its planning efforts for the 2008 ozone standard. The commission makes no change in response to this comment.

Comment

Blue Sky and EnerNOC recommended the commission provide guidance regarding the SIP process. The commenters also requested the commission confirm that the following assumptions are correct: 1) the revisions in §117.379 will not be fully implemented until the EPA approves the SIP revision; 2) engines participating in the ERS and other utility-sponsored emergency demand response programs without sending power to the electric grid can continue to operate under the definition of emergency situation until the references to the appropriate protocols are changed; and 3) emergency engines could not send power to the electric grid under an emergency situation until the SIP revision is approved.

Response

The Texas Water Code authorizes the commission to propose and adopt rules necessary to carry out its powers and duties. Once adopted, the commission files the rule with the Secretary of State for publication in the *Texas Register.* This action usually occurs the first Friday after adoption. The rule becomes effective 20 calendar days after filing and is fully enforceable by the commission from that time on irrespective of EPA approval of the rule revision as part of the SIP. Therefore, beginning on the effective date of the rule, the definition of emergency situation will include operations in direct response to an instruction by ERCOT during the period of an ERCOT-declared emergency that supply power to the electric grid. As discussed elsewhere in the Response to Comments section of the preamble, the definition of emergency situation in §101.379 includes operations during an ERCOT-declared emergency but does not include other utility-sponsored emergency demand response programs. The commission makes no change in response to these comments.

Statutory Authority

The amendment is adopted under the authority of the following: Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy (these provisions authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC); Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.051(d), Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. Finally, the amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401, *et seq.*

§101.379. Program Audits and Reports.

(a) No later than three years after the effective date of this section, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the timing of credit generation and use, the impact of the program on the state's attainment demonstration and the emissions of hazardous air pollutants, the availability and cost of credits, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of discrete emission credits may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency and made available for public inspection within six months after the audit begins.

(b) No later than February 1 of each calendar year, the executive director shall develop and make available to the general public and the United States Environmental Protection Agency a report that includes the following information for the previous calendar year:

(1) the amount of each pollutant emission credits generated under this division;

(2) the amount of each pollutant emission credits used under this division;

(3) a summary of all trades completed under this division; and

(4) the amount of discrete emission reduction credits (DERC) approved for use under subsection (c) of this section.

(c) No later than October 1 of each year, the executive director will complete, and make available to the general public and the United States Environmental Protection Agency, an annual review to determine the number of DERCs available for potential use in the upcoming calendar year for the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area. The annual review will include the calculation of the flow control limit as specified in subsection (c)(2)(A) of this section to ensure noninterference with attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS) and the apportionment of approved DERCs.

(1) For the 2009 control period, the flow control limit for DERCs available for use is the number prescribed in the DFW Eight-Hour Ozone Attainment Demonstration SIP Revision for the 1997 eight-hour ozone standard, in tons per day, not to be exceeded in any day, where a day is a 24-hour period from midnight to midnight.

(2) For any control period after 2009, the annual review will establish a flow control limit for that year, in tons per day, not to be exceeded in any day, where a day is a 24-hour period from midnight to midnight.

(A) The flow control limit for a particular year will be determined using the following equation:
Figure: 30 TAC §101.379(c)(2)(A) (No change.)

(B) If use of the entire DERC bank would not interfere with attainment and maintenance of the 1997 eight-hour ozone NAAQS in the DFW eight-hour ozone nonattainment area, then the number of DERCs potentially available for use is the total number of DERCs in the bank.

(C) If the flow control limit, as calculated in the equation in subparagraph (A) of this paragraph, is greater than the total number of DERCs requested for use in accordance with §101.376(d) of this title (relating to Discrete Emission Credit Use) the executive director:

(i) may approve all requested Notice of Intent to Use Discrete Emission Credits (DEC-2 Form) submittals; and

(ii) will consider any late DEC-2 Forms submitted as provided under §101.376(d)(3) of this title that is not an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation as defined in subparagraph (D) of this paragraph, but will not otherwise approve a late submittal that would exceed the flow control limit established by the equation under subsection (c)(2)(A) of this section.

(D) If the DEC-2 Forms are submitted in response to an ERCOT-declared emergency situation, the request will not be subject to the flow control limit and may be approved provided all other requirements are met. For the purposes of this subparagraph, an ERCOT-declared emergency situation is defined as the period of time that an ERCOT-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (June 1, 2012) and issued as specified in *ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2141

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS
SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §117.10 *with changes* to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8722).

If adopted, the amended §117.10 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

The Electric Reliability Council of Texas, Inc. (ERCOT) manages the electrical grid within the ERCOT region of Texas, with oversight by the Public Utility Commission of Texas (PUCT). On

March 22, 2012, the PUCT repealed 16 TAC §25.507, to replace the Emergency Interruptible Load Service (EILS) program with the Emergency Response Service (ERS) program (16 TAC §25.507). Like the EILS program, the new ERS program is designed to help decrease the likelihood of requiring firm load shedding (i.e., rolling black-outs) during an ERCOT-declared energy emergency by decreasing the power demand on the electrical grid. Under the ERS program, participants commit to decrease their power consumption from the electrical grid during a declared energy emergency. ERS program participants might meet this commitment by decreasing overall power use, replacing power consumption from the grid with local generation by operating local emergency backup generators, or a combination of both. However, unlike the EILS program, the new ERS program allows qualified participants to provide power back into the electrical grid for sale during an ERCOT-declared emergency under limited circumstances.

Operating an emergency generator as part of ERCOT's former EILS program meets the existing definition of an emergency situation in §117.10. The existing definition of an emergency situation in §117.10 includes the period of time that an emergency notice issued by ERCOT is applicable to the serving electric power generating system and references the specific ERCOT protocols that detail the emergency notice. However, the Chapter 117 definition of an emergency situation also specifically excludes operation for purposes of supplying power for distribution to the electrical grid. Therefore, operation of an emergency generator that also provides power back to the electrical grid would not be considered an emergency situation under the current Chapter 117 definition even if the operation were at the directive of ERCOT under the ERS program.

While Chapter 117 would not prohibit companies from participating in the new ERS program, the Chapter 117 rules that apply in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) 1997 eight-hour ozone nonattainment areas have specific provisions that restrict the non-emergency operational hours of emergency generators. For these sources to qualify for an exemption from the rule control requirements, participants in the ERS program would have to count hours of operation during an ERCOT emergency as non-emergency use if power is sold to the grid and might risk losing exemption status under Chapter 117 if the operational hours exceed the exemption criteria.

The adopted rulemaking updates the definition of emergency situation in §117.10 to ensure consistency with ERCOT's new ERS program. The adopted rulemaking references the version of the ERCOT protocols effective on June 1, 2012. The adopted rulemaking also revises the definition of emergency situation to reflect changes made by ERCOT to promote reliability during energy emergencies by allowing the operation of generators for purposes of selling power to the electric grid under limited circumstances.

The amendment to §117.10 is adopted concurrently with an amendment to 30 TAC §101.379 that will be published in a separate rulemaking in this issue of the *Texas Register.*

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

The commission provides the following information to demonstrate why the adopted change to the definition of emergency situation in Chapter 117 will not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

As mentioned elsewhere in this preamble, the Chapter 117 rules exempt certain sources in the DFW and HGB 1997 eight-hour ozone nonattainment areas that operate exclusively during emergency situations or operate for a limited number of hours in non-emergency situations. Under the existing Chapter 117 rules, the period of time during an ERCOT-declared emergency is considered an emergency situation. The commission has interpreted this to mean that when demonstrating compliance with the Chapter 117 exemption criteria, participants in ERCOT's former EILS program were not required to include the hours of operation for generators operated during an ERCOT-declared emergency as non-emergency operation.

ERCOT's new ERS program promotes reliability during energy emergencies by allowing qualified participants to provide power for distribution to the electrical grid during an ERCOT-declared emergency. Under the existing Chapter 117 rules, participants in ERCOT's new ERS program are not required to include the hours of operation for generators operated during an ERCOT-declared emergency when demonstrating compliance with the Chapter 117 exemption criteria as long as these sources do not provide power for distribution to the electrical grid. Because the existing Chapter 117 definition of an emergency situation specifically excludes operation for purposes of supplying power for distribution to the electrical grid, ERS program participants would have to count hours of operation during an ERCOT-declared emergency when demonstrating compliance with the Chapter 117 exemption criteria if power is provided back into the grid. This practice could result in ERS program participants losing exemption status under Chapter 117 if the non-emergency hours exceed the exemption criteria and potentially discourage ERS program participants from supplying excess generation back to the grid during an ERCOT-declared energy emergency. The adopted rulemaking prevents ERS program participants from potentially losing exemption status under Chapter 117 if they provide power to the electrical grid during an ERCOT-declared emergency. The adopted rulemaking ensures that the changes made to ERCOT's new ERS program do not narrow the scope of what the commission currently considers an emergency situation.

The period of time during an ERCOT-declared emergency is currently considered an emergency situation under the existing Chapter 117 rules. The adopted revisions to the definition of emergency situation limit the circumstances under which a generator could provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to an instruction by ERCOT during the period of an ERCOT energy emergency alert (EEA). Therefore, the adopted amendment does not increase the number of sources that could qualify for exemption under the Chapter 117 rules or increase the frequency or duration of the operation during an emergency situation. For these reasons, the commission determined that the adopted rulemaking will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone NAAQS and should not be considered as backsliding under the Federal Clean Air Act (FCAA).

Section Discussion

The commission adopts amendments to the definition of emergency situation in §117.10(15). The commission revises §117.10(15)(A)(ii) to reference the version of the ERCOT Protocols effective June 1, 2012. Additionally, in response to

ERCOT's comments on this rulemaking, the commission is revising the definition of emergency situation in §117.10(15)(A)(ii) to also include operations in response to an ERCOT EEA. The commission is making this change to ensure the definition of emergency situation includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an EEA and subsequently deploying ERS.

The commission adopts §117.10(15)(A)(vii) to include operation of an emergency generator as part of ERCOT's ERS program when the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in §117.10(15)(A)(ii). In response to ERCOT's comments on this rulemaking, the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only those operations that occur during the period of an ERCOT EEA instead of the period of an ERCOT emergency notice. The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. ERCOT only deploys ERS resources during an EEA, so it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

The commission also adopts the reformatting of the existing §117.10(15)(B) description of the situations that are not considered emergency situations. Adopted clause (i) incorporates the existing portion of the definition indicating that an emergency situation does not include operation for training purposes or other foreseeable events. Existing §117.10(15)(B) indicates that an emergency situation does not include operation for purposes of supplying power for distribution to the electric grid. Adopted clause (ii) indicates that an emergency situation does not include operation for purposes of supplying power for distribution to the electric grid except as specified under §117.10(15)(A)(vii). The intent of adopted §117.10(15)(B)(ii) is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. Adopted clause (ii) is necessary to reflect changes made by ERCOT to promote reliability during energy emergencies by allowing the operation of generators for purposes of selling power to the electric grid under limited circumstances.

Final Regulatory Impact Determination

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The adopted rule implements requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the adopted rulemaking is merely an update to the definition of emergency situation in §117.10, ensuring consistency with ERCOT's new ERS program while also reflecting changes made by ERCOT to promote reliability during energy emergencies throughout the state under limited circumstances.

While the adopted rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633,

75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP were considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation. *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) *superseded by statute on another point of law,* Tax Code §112.108, Other Actions Prohibited, *as recognized in, First State Bank of Dumas v. Sharp,* 863 S.W.2d 81, 83 (Tex. App. Austin 1993, no writ); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Commn on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). The specific intent of the adopted rulemaking is merely an update to the definition of emergency situation in §117.10, ensuring consistency with ERCOT's new ERS program while also reflecting changes made by ERCOT to promote reliability during energy emergencies throughout the state under limited circumstances. This adoption, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law but does not exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this adopted rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply and a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the govern-

mental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rule is an update to Chapter 117, Subchapter A to ensure consistency with ERCOT's new ERS program. This rule is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of electric generators in certain limited emergency situations. Furthermore, the rulemaking benefits the public by potentially decreasing the likelihood of requiring firm load shedding (i.e., rolling black-outs) when additional control measures are needed to achieve or maintain attainment of the federal air quality standards through the use of electric generators. The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.32). The adopted rulemaking will not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments concerning the consistency of this rulemaking with the Texas CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendment will not require any changes to federal operating permits.

Public Comment

The commission scheduled a public hearing in Austin on November 28, 2012. However, the commission did not officially open the hearing because no one registered to provide comments. The public comment period closed on December 5, 2012. The commission received comments from the Association of Electric Companies of Texas (AECT), Blue Sky Environmental LLC (Blue Sky), Calpine Corporation (Calpine), EnerNOC, Inc. (EnerNOC), EPA, ERCOT, Exelon Corporation (Exelon), and NRG Texas Power LLC, (NRG). AECT submitted comments on behalf of AEP Texas, CenterPoint Energy, El Paso Electric, Entergy, GDF SUEZ, Nextera Energy, Lone Star Transmission, Oncor, TXU Energy, Luminant, NRG, Reliant, TNMP, and Xcel Energy.

Response to Comments

Comment

AECT, Blue Sky, EnerNOC, ERCOT, and NRG expressed support for the proposed revisions to the definition of emergency situation in §117.10. EPA expressed appreciation for efforts to update the references to ERCOT's protocols in §117.10.

Response

The commission appreciates the support.

Comment

ERCOT commented that if system conditions deteriorate too rapidly it might not be possible to issue an emergency notice prior to declaring an EEA and subsequently deploying ERS. ERCOT recommended the commission amend §117.10(15)(A)(ii) to refer to ERCOT's dispatch of ERS rather than the issuance of an emergency notice to provide affected generators assurance that operation for ERS is always permissible.

Blue Sky and EnerNOC recommended the commission not revise the definition of emergency situation to specify an ERCOT EEA level to account for emergency demand response programs initiated by Texas utilities that are experiencing voltage reductions.

Response

The intent of §117.10(15)(A)(ii) is to specify that emergency situations include operations during an ERCOT-declared emergency not operations during a utility-declared emergency. The commission agrees with ERCOT that operations in response to ERCOT's dispatch of ERS are always considered emergency situations. However, it is possible that the existing provision in §117.10(15)(A)(ii) could affect sources that are not participating in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency. Therefore, the commission is retaining the reference to emergency notice in §117.10(15)(A)(ii) to avoid unintended consequences that could result from limiting this provision solely to ERS operations. In response to ERCOT's comments, the commission is revising the definition of emergency situation to also include operations in response to an ERCOT EEA. The commission is making this change to ensure the definition of emergency situation includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an EEA and subsequently deploying ERS. In response to ERCOT's comments the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only

those operations that occur during the period of an ERCOT EEA instead of the period of an ERCOT emergency notice. The purpose of this rulemaking is to ensure that participants in the ERS program may still claim operational hours during such energy emergencies as an emergency situation under Chapter 117 rules. However, the adopted rule is also intended to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. Since ERCOT only deploys ERS resources during an EEA, it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

Comment

To address concerns about the certainty of the circumstances under which ERCOT will deploy ERS resources, ERCOT recommended that the commission reference the PUCT's ERS rule in 16 TAC §25.507 rather than the ERCOT Nodal Protocols referenced in the proposed rules. ERCOT expressed concern that the frequent revisions to the Nodal Protocols could create confusion as to the applicability of §117.10(15)(A)(ii) and §101.379(c)(2)(D). ERCOT suggested the commission could more easily monitor the infrequent changes to the PUCT rules than the numerous ongoing proposals to revise the ERCOT Nodal Protocols referenced in the proposed rules.

NRG also recommended avoiding references to specific ERCOT protocols that are likely to change periodically. NRG recommended modifying §117.10(15)(A)(ii) to instead refer to the period of time that an engine is operating in response to an ERCOT-issued emergency notice of imminent emergency conditions, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level.

Response

The commission is aware that the ERCOT Nodal Protocols references in §117.10(15) are frequently revised and have been revised since the commission first proposed this rulemaking. However, §117.10(15) and the Chapter 117 rules that reference this term are a part of the SIP and the revised §117.10(15) is subject to EPA review and approval. Specificity is needed in the rule regarding the circumstances under which ERCOT will deploy ERS resources to help ensure EPA approval of the revised rule. While the PUCT's ERS rule in 16 TAC §25.507 speaks to the intent of deploying the ERS program during an EEA event and authorizes ERCOT to create the ERS program, 16 TAC §25.507 does not provide specific restrictions on the deployment of the ERS program to emergencies only. The level of detail in the current 16 TAC §25.507 is not sufficient to ensure that the definition in §117.10(15) does not include the dispatch of ERS outside of ERCOT's-declared energy emergencies. Likewise, the suggested description of an ERCOT-issued emergency notice of imminent emergency conditions does not sufficiently detail the specific circumstances under which ERCOT will deploy ERS resources. To ensure that the amendments to §117.10(15) can be approved by the EPA as part of the SIP, the commission respectfully declines to make the suggested changes.

Comment

AECT commented that because it has concerns about how the use of the term "demand response" has been expanded to include non-emergency situations, AECT supports limiting the definition of emergency situation to those operations that are part of an ERCOT ERS program and are in direct response to an instruction by ERCOT during the period of an ERCOT emergency notice. NRG recommended that this rule only apply to units in emergency demand response programs that are limited to rare instances where grid stability is threatened after all other potential remedies have been exhausted.

To account for emergency demand response programs initiated by Texas utilities that are experiencing voltage reductions, Blue Sky and EnerNOC recommended the commission revise the definition of emergency situation to also include operation in response to a utility-declared emergency.

Response

The commission agrees that the definition of emergency situation should include operations in direct response to an instruction by ERCOT during the period of an ERCOT-declared emergency. As discussed elsewhere in the Response to Comments section of the preamble, the commission is also revising the proposed rule language to include operations that are in direct response to an instruction by ERCOT during the period of an ERCOT EEA.

The commission does not agree that the definition of emergency situation should include operations that occur in response to a utility-declared emergency. The suggested change would decrease the stringency of the existing rule by expanding the scope of the current definition to include additional situations that would not currently be considered emergency situations. Because the EPA has approved the existing rule as part of the SIP, the suggested expansion of the definition could be considered backsliding and result in the EPA's disapproval of the rulemaking. The commission makes no change in response to these comments.

Comment

Blue Sky and EnerNOC recommended the commission provide guidance regarding the SIP process. The commenters also requested the commission confirm that the following assumptions are correct: 1) the revisions to §117.10 will not be fully implemented until the EPA approves the SIP revision; 2) engines participating in the ERS and other utility-sponsored emergency demand response programs without sending power to the electric grid can continue to operate under the definition of emergency situation until the references to the appropriate protocols are changed; and 3) emergency engines could not send power to the electric grid under an emergency situation until the SIP revision is approved.

Response

The Texas Water Code authorizes the commission to propose and adopt rules necessary to carry out its powers and duties. Once adopted, the commission files the rule with the Secretary of State for publication in the *Texas Register.* This action usually occurs the first Friday after adoption. The rule becomes effective 20 calendar days after filing and is fully enforceable by the commission from that time on irrespective of EPA approval of the rule revision as part of the SIP. Therefore, beginning on the effective date of the rule, the definition of emergency situation will include operations in direct response to an instruction by ERCOT during the period of an ERCOT-declared emergency that supply power to the electric grid. As discussed elsewhere in the Response to Comments section of the preamble, the definition of emergency situation in §117.10 includes operations during an ERCOT-declared emergency but does not include other utility-sponsored emergency demand response programs.

Comment

Calpine recommended the commission remove the exemption afforded to ERS participants and require that all commercial generation meet best available control technology and reasonably available control technology requirements. Exelon requested the commission abandon its efforts to exempt from pollution controls units that sell power back to the electrical grid and require all commercial generation to satisfy the commission's pollution control requirements.

Calpine and Exelon commented that exempting commercial backup generation from air quality regulations would negatively affect air quality by expanding the number of high-emitting diesel engines; discouraging investment in new, low-emitting generation; and providing an unnecessary subsidy to high-emitting sources. Calpine also commented that the proposed rule might not benefit electric reliability.

Response

The commenters' suggested changes to revoke exemptions for emergency backup generators are outside the scope of this rulemaking. The Chapter 117 rules exempt certain sources in the DFW and HGB 1997 eight-hour ozone nonattainment areas that operate exclusively during emergency situations or operate for a limited number of hours in non-emergency situations. The exemptions that reference the definition of emergency situation for this purpose were not proposed for revision with this rulemaking.

The intent of the existing Chapter 117 rules is to ensure that operation during an ERCOT-declared emergency is not considered non-emergency operation when demonstrating compliance with the Chapter 117 exemption criteria. Under ERCOT's former EILS program, affected resources reduced electric consumption by using on-site backup generation but did not supply power to the electric grid. Therefore, the restriction on supplying power for distribution to the electric grid in §117.10(15)(B) did not affect EILS program participants. The amendments to §117.10(15) ensure that the changes made to ERCOT's new ERS program, which allow participants to provide power for distribution to the electrical grid, do not narrow the scope of what the commission currently considers an emergency situation. The adopted rulemaking does not relieve affected sources from the obligation to meet any air quality regulation that currently applies.

The commission does not agree that the revisions to §117.10(15) will negatively affect air quality by expanding the number of high-emitting diesel engines, discouraging investment in low-emitting generation, or subsidizing high-emitting sources. The dispatch of ERS resources is limited to rare instances where the reliability of the ERCOT system is threatened and all other potential solutions have been exhausted. ERCOT has dispatched emergency response resources for a total of 30 hours since 2006. Operation of emergency generators during an ERCOT-declared emergency under the previous EILS program was considered an emergency situation under the existing Chapter 117 rules. The adopted revisions to §117.10(15) are intended to clarify the definition with regard to such emergencies and account for the revisions that ERCOT has made in the new ERS program. Adopted §117.10(15)(B)(ii) only allows operation of an emergency generator for supplying power to the electrical grid to be considered an emergency situation if the operation is part of ERCOT's ERS program and in direct response to instruction by ERCOT during an EEA. The purpose of this rulemaking is to ensure that participants in the ERS program may still claim operational hours during such energy emergencies as an emergency situation under Chapter 117 rules. Therefore, the commission does not consider the rulemaking as expanding the number of stationary diesel engines in operation or as providing a subsidy for diesel engines. Additionally, owners and operators of emergency generators that seek exemption from Chapter 117 rules must still meet all applicable criteria before qualifying for an exemption. The commission has previously incorporated provisions in the exemption criteria for emergency stationary diesel engines to help ensure that emissions from exempt diesel engines are minimized. For example, as part of the exemption criteria, stationary diesel engines in the DFW and HGB areas that are installed, modified, reconstructed, or relocated after specific dates in the Chapter 117 rules are required to meet the corresponding emission standards for non-road engines in 40 Code of Federal Regulations §89.112(a), Table 1, that are in effect at the time the engine was installed, modified, reconstructed, or relocated.

While the commission cannot quantify the effects of this revision on electric reliability, the commission does not agree with the commenters' assertion that there is no reliability-related rationale for this rulemaking. ERCOT's new ERS program promotes reliability during energy emergencies by allowing qualified participants to provide power for distribution to the electrical grid during an ERCOT-declared emergency. As discussed elsewhere in the Response to Comments Section of this preamble, the purpose of this rulemaking is to ensure that participants in the ERS program continue to be allowed to count operation in response to an ERCOT-declared emergency as an emergency situation. While the adopted revisions to §117.10(15) do not directly promote reliability, the rulemaking helps ensure that Chapter 117 rules will not be a disincentive to the ERS program by forcing participants to count emergency operation as non-emergency hours. The commission makes no changes in response to these comments.

Comment

ERCOT commented that since the operation of a generator for ERS purposes would always fall within the coverage of §117.10(15)(A)(ii), creating an additional exemption for the operation of ERS generators in §117.10(15)(A)(vii) is unnecessary. ERCOT suggested deleting §117.10(15)(A)(vii) and revising §117.10(15)(B)(ii) to reference §117.10(15)(A)(ii) instead of §117.10(15)(A)(vii).

NRG supported explicitly including emergency demand response events under the definition of emergency situation. However, instead of adding this language as a new provision under §117.10(15)(A)(vii), NRG recommended modifying §117.10(15)(A)(ii) to the period of time that an engine is operating in response to an ERCOT-issued emergency notice of imminent emergency conditions, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level.

Response

The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are both part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. It is possible that the existing provision in §117.10(15)(A)(ii) could affect sources that are not participating in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency. The commission is adding the additional detail in §117.10(15)(A)(vii) and (B)(ii) to explicitly limit the circumstances under which an emergency generator could provide power for distribution to the electrical grid to only those operations that are part of ERCOT's

ERS program. The commission makes no change in response to these comments.

As discussed elsewhere in the Response to Comments section of this preamble, in response to ERCOT's comments the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only those operations that occur during the period of an ERCOT EEA instead of the period of an ERCOT emergency notice. The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. ERCOT only deploys ERS resources during an EEA, so it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

Comment

NRG stated its belief that the current Chapter 117 definition of emergency situation does not preclude an engine from operating as part of an emergency demand response program and the intent of §117.10(15)(B) was to prevent those engines that supply power for distribution to the grid for economic gain unrelated to imminent emergency conditions from being classified as emergency engines, thus avoiding environmental controls. As such, NRG supported TCEQ's proposal to explicitly differentiate between these two operating scenarios and recommended §117.10(15)(B) be amended as proposed by the commission.

Response

The commission appreciates the support and made no changes to the rulemaking in response to this comment.

Comment

NRG supported aligning the Chapter 117 definition of emergency situation with ERCOT's emergency demand response program in lieu of establishing an annual limit on emergency demand response operation to allow ERCOT to manage and optimize emergency demand response operations.

Response

The commission appreciates the support.

Statutory Authority

The amendment is adopted under the authority of the following: Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy (these provisions authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC); Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.051(d), Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. Finally, the amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

(2) Applicable ozone nonattainment area--The following areas, as designated under the 1990 Federal Clean Air Act Amendments.

(A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.

(B) Dallas-Fort Worth ozone nonattainment area--An area consisting of Collin, Dallas, Denton, and Tarrant Counties.

(C) Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(D) Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C of this chapter (relating to Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

(i) Beaumont-Port Arthur;

(ii) Dallas-Fort Worth;

(iii) Dallas-Fort Worth eight-hour; or

(iv) Houston-Galveston-Brazoria;

(B) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County; or

(C) for the purposes of Subchapter B of this chapter (relating to Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas), all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (A) of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers.

(15) Emergency situation--As follows.

(A) An emergency situation is any of the following:

(i) an unforeseen electrical power failure from the serving electric power generating system;

(ii) the period of time that an Electric Reliability Council of Texas, Inc. (ERCOT)-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (June 1, 2012) and issued as specified in *ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT;

(iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);

(iv) an unforeseen failure of natural gas service;

(v) an unforeseen flood or fire, or a life-threatening situation;

(vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity; or

(vii) operation of an emergency generator as part of ERCOT's emergency response service (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (June 1, 2012)) if the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in clause (ii) of this subparagraph.

(B) An emergency situation does not include:

(i) operation for training purposes or other foreseeable events; or

(ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth or the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10^{11}) British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10^{11}) Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.

(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 50 tpy of NO_x and is located in the Dallas-Fort Worth or Dallas-Fort Worth eight-hour ozone nonattainment area;

(C) at least 25 tpy of NO_x and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or

(D) the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity; or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.

(31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O_2) correction basis, the following equation must be used.
Figure: 30 TAC §117.10(35) (No change.)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and

recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane, propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth or the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.

(45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.

(46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.

(47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.

(48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.

(49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

(51) Unit--A unit consists of either:

(A) for the purposes of §§117.105, 117.205, 117.305, 117.1005, 117.1105, and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, 117.205, 117.305, 117.1005, 117.1105, and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section;

(B) for the purposes of §§117.110, 117.210, 117.310, 117.1010, 117.1110, and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, 117.210, 117.310, 117.1010, 117.1110, and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO_x) at a major source, as defined in this section;

(C) for the purposes of §117.2010 of this title (relating to Emission Specifications) and each requirement of this chapter associated with §117.2010 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;

(D) for the purposes of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2110 of this title, any stationary internal combustion engine, as defined in this section;

(E) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section; or

(F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section.

(52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity. Stationary gas turbines, including

any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS
DIVISION 2. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §§117.2103, 117.2130, 117.2135, 117.2145

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts amendments to §§117.2103, 117.2130, 117.2135, and 117.2145 *without changes* to the proposed text as published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9060) and the text will not be republished.

The adopted amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On April 5, 2012, Halliburton Energy Services, Incorporated (Halliburton) submitted a petition for rulemaking requesting a partial exemption from the rules in 30 TAC Chapter 117, Subchapter D, Division 2 that limit nitrogen oxides (NO_x) emissions from minor sources in the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area (DFW area). The commission approved the petition for rulemaking on May 30, 2012 and issued an order on June 1, 2012 directing the executive director to examine the issues in the petition and to initiate rulemaking (Project No. 2012-029-PET-NR).

The unique service of the Halliburton Drawworks Engine makes ongoing testing to demonstrate compliance with the Chapter 117 NO_x emission limits impractical and comparatively more expensive than the stationary engine testing envisioned during the adoption of the Chapter 117 rules in 2007. To comply with the Chapter 117 testing requirements, Halliburton must arrange for both emissions testing equipment (a normal and expected expense) and for the rental, transport, and use of a dynamometer, which is typically used by engine manufacturers for testing purposes. Preparing the engine for installation of the dynamometer and returning the engine to operational status subsequent to the emissions testing presents significant safety hazards associated with the removal of the drive train and transmission, removal of the torque converter, and the placement and use of non-dedicated hoisting equipment on the rig floor. Performing a compliant emissions test of the Drawworks Engine takes three to four days to complete, whereas compliant emissions testing on a typical stationary engine only requires approximately half a day. Additionally, engines used to raise and lower down-hole equipment in actual oil and gas operations in the field, which the Drawworks Engine is designed to simulate, are typically not subject to similar Chapter 117 testing requirements because they are not installed at a location long enough to trigger the definition of a stationary internal combustion engine in §117.10. The Drawworks Engine is subject to Chapter 117, Subchapter D, Division 2 because the equipment has been made stationary to provide testing and training facilities for sources that are not subject to the rule.

The adopted change will expand the list of exempted sources in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 Code of Federal Regulations (CFR) §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The adopted exemption is narrow in scope and consistent with the similar existing exemptions for stationary diesel engines located at minor sources, such as stationary engines used in research and testing and stationary engines used for purposes of performance verification and testing. The adopted change will also revise the operating requirements of §117.2130, the monitoring requirements of §117.2135, and the recordkeeping requirements of §117.2145 to reflect the new category of exempt engines.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The commission provides the following information to demonstrate why the adopted new exemption in §117.2103 will not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

On December 6, 2000, as part of the Houston-Galveston-Brazoria (HGB) attainment demonstration SIP revision, the commission adopted a new control strategy for stationary reciprocating internal combustion engines, boilers, and process heaters located at minor industrial, commercial, and institutional sources of NO_x in the HGB area. The adopted rulemaking exempted engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

On May 23, 2007, as part of the DFW 1997 eight-hour ozone attainment demonstration SIP revision, the commission adopted new emission control requirements for stationary reciprocating internal combustion engines located at minor industrial, commercial, and institutional sources of NO_x in the DFW area. The NO_x emission reductions were necessary for the DFW area to attain the 1997 eight-hour ozone NAAQS. Similar to the HGB rulemaking, the DFW rulemaking also adopted exemptions for engines used for specific purposes, such as those used in research and

testing and those used for the purposes of performance verification and testing.

The adopted partial exemption is narrowly tailored and will not adversely impact the DFW area's progress in attaining the 1997 eight-hour ozone NAAQS. During the 2000 and 2007 rulemakings, no stationary engines similar in function to the Halliburton Drawworks Engine were identified in the emissions inventory in the counties impacted by the rulemakings, and no such engines were relied upon for creditable reductions for the SIP revision. Therefore, the adopted rulemaking will not result in a loss of any SIP creditable reductions for the DFW 1997 eight-hour ozone nonattainment area. Additionally, based on February 2012 emissions test results and a limit of no more than 1,000 hours of run time per year, the Drawworks Engine has maximum potential annual NO_x emissions of 0.87 tons per year and is well below the emission standards established in the Chapter 117 minor source NO_x rules. The adopted exemption criteria require compliance with the federal standards in 40 CFR Part 89 to ensure that the adopted exemption will not result in backsliding. Based on the test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). Therefore, the Drawworks Engine will be required to and does meet the applicable federal emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998) for the engine's size and installation date. The NO_x emission limits for stationary diesel engines in §117.2110 were derived from the Tier standards in 40 CFR Part 89. Therefore, the adopted exemption will not result in additional NO_x emissions in the DFW area.

Based on these factors, the commission has determined that the adopted rule change will not negatively impact the status of the state's attainment demonstration for the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section by Section Discussion

Section 117.2103, Exemptions

The commission adopts §117.2103(10) to exempt stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The adopted exemption only applies to an engine that is in dedicated service for product testing and personnel training and does not apply to an engine used for any additional purpose. The adopted amendment will exempt engines in this unique service from ongoing testing to demonstrate compliance with the Chapter 117 NO_x emission limits because the testing requirements are impractical and comparatively more expensive than the stationary engine testing envisioned at adoption of the rule. Requiring compliance with the federal standards in 40 CFR Part 89 ensures that the adopted exemption will not result in additional NO_x emissions in the DFW area because the Chapter 117 NO_x emission limits were derived from these federal standards. Furthermore, the adopted rules change the petitioner's suggested operating restriction language from "rolling 12-month average" to "rolling 12-month basis" in adopted §117.2103(10)(B) to make clear that compliance is based on the total annual hours of operation.

Section 117.2130, Operating Requirements

The commission amends §117.2130(c)(1) - (3) to distinguish between product testing as used in the adopted exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). Existing §117.2130(c) prohibits a person from starting or operating any stationary diesel or dual-fuel engine in the DFW area for testing or maintenance between the hours of 6:00 a.m. and noon, except under specific conditions. The adopted revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid potential conflict with the adopted exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition.

Section 117.2135, Monitoring, Notification, and Testing Requirements

The commission amends §117.2135(e) to reference the adopted exemption in §117.2103(10). Revised §117.2135(e) requires sources claiming the adopted exemption in §117.2103(10) to monitor the operating time with a non-resettable elapsed run time meter in order to demonstrate compliance with the operating restrictions in §117.2103(10). To conform to *Texas Register* formatting standards, the commission is also amending subsection (e) by adding a reference to the title of §117.2103.

Section 117.2145, Recordkeeping and Reporting Requirements

The commission amends §117.2145(b) by reformatting the existing provision and adding new recordkeeping requirements associated with the adopted exemption in §117.2103(10). The commission is reformatting the existing requirements in §117.2145(b) to accommodate the new recordkeeping requirements associated with the adopted exemption in §117.2103(10). The adopted amendment does not alter the intent of the existing recordkeeping requirements for sources currently complying with §117.2145(b) or impose any new requirements on engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3).

The adopted changes to §117.2145(b) reformat the record retention requirement in existing §117.2145(b) to require the records specified in paragraphs (1) - (3) to be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction.

Adopted §117.2145(b)(1) requires written records of the number of hours of operation for each day's operation to be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) or §117.2130(b)(3). Adopted §117.2145(b)(1) includes the existing requirements in §117.2145(b) for engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3) and applies the same requirements to engines claimed exempt under adopted §117.2103(10). The adopted revision requires sources claiming the adopted exemption in §117.2103(10) to maintain written records of the number of hours of operation for each day's operation in order to demonstrate compliance with the operating restrictions included in §117.2103(10).

Adopted §117.2145(b)(2) includes the existing requirements in §117.2145(b) for the owner or operator of each engine claimed exempt under §117.2103(5) to maintain written records of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

Adopted §117.2145(b)(3) requires the owner or operator of each engine claimed exempt under §117.2103(10) to maintain records of manufacturer's specifications or test data sufficient to demonstrate compliance with the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) as specified in §117.2103(10)(C). The petition for rulemaking approved by the commission on May 30, 2012 did not include a specific request for this recordkeeping requirement. However, the commission is adopting this recordkeeping requirement to clearly indicate the records required to demonstrate compliance with the adopted exemption criteria in §117.2103(10) and facilitate enforcement of the adopted exemption. Additionally, the adopted recordkeeping provision in subsection (b)(3) clarifies that either engine manufacturer's specifications or actual emission testing are acceptable for demonstrating that the engine meets the exemption criteria.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The adopted rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the adopted rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules, which will expand the list of exempted sources operating in limited services in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines listed in the applicable CFR.

While the adopted rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contem-

plated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ); superseded by statute on another point of law,* Tax Code §112.108, Other Actions Prohibited, *as recognized in, First State Bank of Dumas v. Sharp,* 863 S.W.2d 81, 83 (Tex. App. Austin 1993, *no writ); Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ).* The specific intent of the adopted rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training and meet applicable Tier emission standards for non-road engines listed in the applicable CFR. This adoption, therefore, does not exceed an express requirement of federal law. The amendments are needed to implement state law but do exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this adopted rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply and a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and received no comments.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is an update to Chapter 117, Subchapter D, Division 2 expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training and meet applicable Tier emission standards for non-road engines. This rulemaking is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of stationary engines in limited circumstances. Furthermore, the rulemaking benefits the public by providing oil and gas field operators an opportunity for safe simulation without incurring the significant safety hazards typically associated with the current testing requirements of stationary engines.

The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments on the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Public Comment

The commission scheduled a public hearing on the rulemaking in Fort Worth on December 13, 2012 and a second hearing in Austin on December 18, 2012. The commission did not open either hearing as no interested individuals registered to provide comments. The public comment period closed on December 19, 2012. The commission received one comment from the North Central Texas Council of Governments (NCTCOG) opposing the proposed rule revisions.

Response to Comments

Comment

NCTCOG commented that this and similar training sites should be located outside of all nonattainment areas in the state because approving an exemption could contribute to the exceedance of federal ozone standards in the DFW area. Alternatively, NCTCOG requested that if the commission approves the exemption, it require that all eligible engines be located away from air quality monitors and sensitive groups.

Response

The commission makes no changes to the adopted rules in response to this comment. The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The commenter's suggested change is outside the scope of this rulemaking. Requiring facilities subject to the exemption to relocate to an attainment county or alternative location within the nonattainment county through this rulemaking would be equivalent to revoking an existing facility's authorization and force consideration of location for new New Source Review authorizations, which is contrary to the TCEQ's authority under the Texas Clean Air Act. Additionally, the adopted exemption will not result in additional NO_x emissions in the DFW area. The exemption criteria require compliance with the federal standards in 40 CFR Part 89 from which the NO_x emission limits for stationary diesel engines in §117.2110 were derived. Based on February 2012 emissions test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and is well below the applicable emission standards in §117.2110.

Comment

NCTCOG requested confirmation that the engine referenced in Halliburton's petition for rulemaking is located in Carrollton, Texas. NCTCOG requested the commission confirm that the proposed rulemaking only exempts one engine or alternatively confirm the number of affected engines and the projected increase in annual emissions. NCTCOG also requested the commission provide documentation on the analysis of emission estimates and the impact of the additional emissions from the newly exempted engine on air quality monitors and sensitive populations. NCTCOG asked if the proposed exemption allows additional training sites to be located in the DFW area. NCTCOG also asked if the commission considered the possibility and impact of additional engines used for this purpose in the DFW area.

Response

The commission is currently aware of only one engine that meets the newly adopted exemption criteria, and that is the Halliburton Drawworks Engine located in Carrollton, Texas. However, other engines that meet the adopted exemption criteria in §117.2103(10) could also qualify for exemption. As discussed in the Background and Summary of the Factual Basis for the Adopted Rules, and Response to Comments sections of this preamble, the adopted exemption will not increase annual NO_x emissions in the DFW area. The exemption in §117.2103(10) requires the engine to meet the applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). The NO_x emission limits for stationary diesel engines in §117.2110 were derived from the same Tier standards in 40 CFR §89.112(a). Therefore, even if additional units do meet the exemption criteria in §117.2103(10), the NO_x emissions from such units are not expected to exceed the NO_x emissions anticipated if the same new units were required to meet the applicable NO_x emission limits in §117.2110. The commission makes no changes in response to this comment.

Comment

NCTCOG asked why the proposed maximum annual operating hours were 1,000 hours given that the existing exemptions in §117.2103(5), (8), and (9) are limited to 100 hours per year.

Response

The existing exemptions in §117.2103(5), (8), and (9) are intended to apply to sources that operate in very limited service, such as emergency backup generator engines. The hours limitations in §117.2103(5), (8), and (9) are designed for engines that are in emergency or limited service. Other existing rules, such as §117.2103(2) and (3), exempt engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing. The Halliburton Drawworks Engine is not an emergency backup engine or limited-use engine. Rather, the Drawworks Engine is a primary service engine and is similar to the engines used for specific purposes that qualify for the exemptions in §117.2103(2) and (3). However, the existing exemptions in §117.2103 do not cover the full operating range of Halliburton's Drawworks Engine due to the unique nature of its service. Instead of granting the full

exemption afforded to other engines that operate in specific service, the commission is adding an additional layer of stringency to the exemption by limiting the engine's hours of operation. The commission makes no changes in response to this comment.

Comment

NCTCOG requested the commission justify why the proposed rule provides an exemption from the operating requirements in §117.2130, which prohibit affected engines from being started between the hours of 6:00 a.m. and noon.

Response

The operating requirement in §117.2130(c) prohibits the operation of any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon except under limited circumstances. The commission is amending §117.2130(c)(1) - (3) to distinguish between product testing as used in the adopted exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). The commission is not providing an exemption from the operating requirement in §117.2130(c). The adopted revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid conflict with the adopted exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition. The commission's intent for §117.2130(c) has always been that the prohibition applies to testing and maintenance of the engine itself. These activities can typically be scheduled outside the 6:00 a.m. to noon time-frame without significantly interfering with the daily operations of a facility. Section 117.2130(c) does apply to the Halliburton Drawworks Engine when Halliburton operates the engine as part of the engine's routine testing and maintenance. However, §117.2130(c) does not apply when Halliburton is operating the engine as part of the facility's normal operation of testing drilling equipment and training personnel. The commission makes no changes in response to this comment.

Comment

NCTCOG asked if there are recent time-of-day photochemical model sensitivity runs that indicate how early morning NO_x and volatile organic compound emissions impact afternoon ozone formation.

Response

The commission did not conduct photochemical modeling in support of this rule revision. The DFW attainment demonstration SIP revision for the 1997 eight-hour ozone standard adopted by the commission on December 7, 2011 (Project Number 2010-022-SIP-NR) contains the most recent photochemical modeling analysis for the DFW area. The photochemical modeling for the 2011 DFW attainment demonstration SIP revision used emissions that were temporally allocated according to emission category but modeling runs were not conducted to determine the sensitivity of the model to changes in emissions by time of day. The commission makes no changes in response to this comment.

Comment

NCTCOG requested the TCEQ examine the benefits and feasibility of requiring independent third-party verification of industry-reported monitoring and compliance data.

Response

The commenter's request is outside the scope of this rulemaking. The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The commission makes no changes in response to this comment.

Comment

NCTCOG requested the TCEQ require training to include smart operating practices such as no idling, proper engine maintenance, and other emission reducing strategies.

Response

The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The training suggested by the commenter is not necessary to ensure compliance with the adopted exemption criteria in §117.2103(10). Additionally, applying such training requirements generally under Chapter 117, Subchapter D, Division 2 is outside the scope of this rulemaking. The commission makes no changes in response to this comment.

Comment

NCTCOG requested the TCEQ require Halliburton to identify and implement emission reduction offsets for increased emissions.

Response

As discussed in the Background and Summary of the Factual Basis for the Adopted Rules, and Response to Comments sections of this preamble, the adopted exemption will not increase NO_x emissions in the DFW area. Therefore, emission reduction offsets are not necessary. The adopted exemption in §117.2103(10) requires the engine to meet the federal Tier standard used to derive the applicable Chapter 117 NO_x emission specification. The federal standard is at least as stringent as the corresponding NO_x emission limit in §117.2110 and therefore the adopted exemption will not result in additional NO_x emissions in the DFW area. In addition, test results indicate the NO_x emissions from Halliburton's Drawworks Engine are below the applicable Chapter 117 NO_x emission specification. The commission makes no changes in response to this comment.

Statutory Authority

The amendments are adopted under the authority of the following: Texas Government Code, §2001.021, Petition for the Adoption of Rules, which authorizes an interested person to petition a state agency for the adoption of a rule; Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC; Texas Health and Safety Code (THSC), The Texas Clean Air Act (TCAA), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, TCAA, §382.012, State Air Control Plan, which authorizes the commission to pre-

pare and develop a general, comprehensive plan for the control of the state's air. The amendments are also adopted under THSC, §382.016, Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. Finally, the amendments are also adopted under the Federal Clean Air Act (FCAA), 42 USC, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement TWC, §5.103 and §5.105, THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.051; and FCAA, 42 USC, §§7401, *et seq.*

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301492
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 2, 2013
Proposal publication date: November 16, 2012
For further information, please call: (512) 239-2548

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 15. ELECTRONIC TRANSFER OF CERTAIN PAYMENTS TO STATE AGENCIES

34 TAC §§15.1 - 15.18

The Comptroller of Public Accounts adopts the repeal of Chapter 15, §§15.1 - 15.18, concerning the electronic transfer of certain payments to state agencies, pursuant to Government Code, §404.095, without changes to the proposal as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 782).

The comptroller is adopting a new set of Chapter 15 rules that will update and replace the existing Chapters 15 and 16 rules. Government Code, §404.095 requires the Comptroller of Public Accounts to adopt rules specifying the approved means of electronic funds transfer and to specify the separate categories of payments. The new Chapter 15 rules do not contain any major substantive or procedural changes to the existing practice and procedures for electronic transfer of certain payments to state agencies pursuant to Government Code, §404.095. The repeal of Chapter 15 will be effective as of the date the new Chapter 15 rules take effect.

No comments were received regarding adoption of the repeal.

The repeal of Chapter 15 is adopted under Government Code, §404.095, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Electronic Funds Transfer of Certain Payments under Government Code, §404.095.

The repeal of Chapter 15 is pursuant to Government Code, §404.095.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301484
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: May 2, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER A. APPLICABILITY, DEFINITIONS AND PAYMENT CATEGORIES

34 TAC §§15.1 - 15.8

The Comptroller of Public Accounts adopts new Chapter 15, Subchapter A, §§15.1 - 15.8, concerning Applicability, Definitions and Payment Categories, pursuant to Government Code, §404.095, without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 783).

The comptroller is adopting new Chapter 15 rules, including new Subchapters A - D, to update and replace the existing Chapters 15 and 16 rules. Government Code, §404.095 requires the Comptroller of Public Accounts to adopt rules specifying the approved means of electronic funds transfer and to specify the separate categories of payments. The new Chapter 15 rules do not contain any major substantive or procedural changes to the existing practice and procedures for electronic transfer of certain payments to state agencies pursuant to Government Code, §404.095. The Comptroller of Public Accounts' repeal of Chapters 15 and 16 will be effective as of the date the new Chapter 15 rules take effect.

The rules in Chapter 15, Subchapter A, address the applicability, definitions, and payment categories for the electronic transfer of certain payments to state agencies under Government Code, §404.095. Section 15.1, Applicability and Additional Information, explains the applicability to electronically transfer certain payments to a state agency by an approved means of electronic funds transfer under Government Code, §404.095, and how to find additional information on the subject. Section 15.2, Approved Means of Electronic Funds Transfer, sets out the approved means of electronic funds transfer under Government Code, §404.095. Section 15.3, Definitions, contains the definitions for the Chapter 15 rules. Section 15.4, Applicable Payment Categories and Voluntary Payments, discusses the applicable payment categories and voluntary payments. Section 15.5, Payment Category: Fees, discusses the payment category of fees and §15.6, Payment Category: Taxes, relates to the payment category of taxes. Section 15.7, Payment Category: Other Pay-

ments, relates to the payment category of other payments. Section 15.8, Voluntary Payments by Electronic Funds Transfer, discusses voluntary payments by electronic funds transfer.

No comments were received regarding adoption of the new sections.

The new Chapter 15, Subchapter A is adopted under Government Code, §404.095, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Electronic Funds Transfer of Certain Payments under Government Code, §404.095.

The adoption of new Chapter 15, Subchapter A is pursuant to Government Code, §404.095.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301486
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: May 2, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER B. STATE AGENCY PRACTICE AND PROCEDURES

34 TAC §15.21, §15.22

The Comptroller of Public Accounts adopts new Chapter 15, Subchapter B, §15.21 and §15.22, concerning State Agency Practice and Procedures, pursuant to Government Code, §404.095, without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 787).

The comptroller is adopting new Chapter 15 rules, including new Subchapters A - D, to update and replace the existing Chapters 15 and 16 rules. Government Code, §404.095 requires the Comptroller of Public Accounts to adopt rules specifying the approved means of electronic funds transfer and to specify the separate categories of payments. The new Chapter 15 rules do not contain any major substantive or procedural changes to the existing practice and procedures for electronic transfer of certain payments to state agencies pursuant to Government Code, §404.095. The Comptroller of Public Accounts' repeal of Chapters 15 and 16 will be effective as of the date the new Chapter 15 rules take effect.

The rules in Chapter 15, Subchapter B address the state agency practice and procedures for the electronic transfer of certain payments to state agencies under Government Code, §404.095. Section 15.21, State Agency Rules Requirements, concerns state agencies that have adopted rules to require payment by electronic funds transfer under Government Code, §404.095(c). Section 15.22, State Agency Applicability Determination and Notification Procedures, relates to a state agency's requirements to determine which persons are required to make payment to that agency by electronic funds transfer and to notify the affected persons.

No comments were received regarding adoption of the new sections.

The new Chapter 15, Subchapter B is adopted under Government Code, §404.095, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Electronic Funds Transfer of Certain Payments under Government Code, §404.095.

The adoption of new Chapter 15, Subchapter B is pursuant to Government Code, §404.095.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301487
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: May 2, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER C. TEXNET: GENERAL PAYMENT PROCEDURES

34 TAC §§15.31 - 15.35

The Comptroller of Public Accounts adopts new Chapter 15, Subchapter C, §§15.31 - 15.35, concerning TexNet: General Payment Procedures, pursuant to Government Code, §404.095, without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 788).

The comptroller is adopting new Chapter 15 rules, including new Subchapters A - D, to update and replace the existing Chapters 15 and 16 rules. Government Code, §404.095 requires the Comptroller of Public Accounts to adopt rules specifying the approved means of electronic funds transfer and to specify the separate categories of payments. The new Chapter 15 rules do not contain any major substantive or procedural changes to the existing practice and procedures for electronic transfer of certain payments to state agencies pursuant to Government Code, §404.095. The Comptroller of Public Accounts' repeal of Chapters 15 and 16 will be effective as of the date the new Chapter 15 rules take effect.

The rules in Chapter 15, Subchapter C address the general payment procedures for the electronic transfer of certain payments to state agencies using TexNet, the State of Texas Financial Network, to facilitate and process the electronic transfer of funds under Government Code, §404.095. Section 15.31, TexNet Enrollment, concerns the TexNet enrollment process. Section 15.32, Transmission of TexNet Payment Information, relates to the transmission of TexNet payment information. Section 15.33, Determination of Settlement Date, discusses the determination of settlement date and §15.34, Transfer of Funds to the Comptroller, relates to the transfer of funds to the comptroller. Section

15.35, Notification to the Comptroller, provides information on how to provide notification to the comptroller.

No comments were received regarding adoption of the new sections.

The new Chapter 15, Subchapter C is adopted under Government Code, §404.095, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Electronic Funds Transfer of Certain Payments under Government Code, §404.095.

The adoption of new Chapter 15, Subchapter C is pursuant to Government Code, §404.095.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301488
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: May 2, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER D. TEXNET: SPECIAL PAYMENT PROCEDURES

34 TAC §§15.41 - 15.45

The Comptroller of Public Accounts adopts new Chapter 15, Subchapter D, §§15.41 - 15.45, concerning TexNet: Special Payment Procedures, pursuant to Government Code, §404.095, without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 789).

The comptroller is adopting new Chapter 15 rules, including new Subchapters A - D, to update and replace the existing Chapters 15 and 16 rules. Government Code, §404.095 requires the Comptroller of Public Accounts to adopt rules specifying the approved means of electronic funds transfer and to specify the separate categories of payments. The new Chapter 15 rules do not contain any major substantive or procedural changes to the existing practice and procedures for electronic transfer of certain payments to state agencies pursuant to Government Code, §404.095. The Comptroller of Public Accounts' repeal of Chapters 15 and 16 will be effective as of the date the new Chapter 15 rules take effect.

The rules in Chapter 15, Subchapter D address special payment procedures for the electronic transfer of certain payments to state agencies under TexNet, the State of Texas Financial Network used to facilitate and process the electronic transfer of funds under Government Code, §404.095. Section 15.41, Missed Payment Deadline Procedures, sets out the procedures for missed payment deadlines. Section 15.42, Late Payment, concerns late payments. Section 15.43, Penalties, relates to penalties for failure to make payments by electronic funds transfer or to comply with the comptroller's rules for the electronic payment to certain agencies. Section 15.44, Proof of Payment, concerns the proof of payment to document a person's attempt to timely transfer payment by electronic funds transfer. Section 15.45, Refunds, relates to refunds of payments made by electronic funds transfer under Government Code, §404.095.

No comments were received regarding adoption of the new sections.

The new Chapter 15, Subchapter D is adopted under Government Code, §404.095, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Electronic Funds Transfer of Certain Payments under Government Code, §404.095.

The adoption of new Chapter 15, Subchapter D is pursuant to Government Code, §404.095.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301489
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: May 2, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 475-0387

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CHAPTER 16. ELECTRONIC TRANSFER OF PAYMENTS TO THE TEXAS STATE TREASURY DEPARTMENT

34 TAC §16.1, §16.2

The Comptroller of Public Accounts adopts the repeal of Chapter 16, §16.1 and §16.2, concerning electronic transfer of payments to the former Texas State Treasury Department, pursuant to Government Code, §404.095, without changes to the proposal as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 791).

The comptroller is adopting a new set of Chapter 15 rules that will update and replace the existing Chapters 15 and 16 rules. Government Code, §404.095 requires the Comptroller of Public Accounts to adopt rules specifying the approved means of electronic funds transfer and to specify the separate categories of payments. The new Chapter 15 rules do not contain any major substantive or procedural changes to the existing practice and procedures for electronic transfer of certain payments to state agencies pursuant to Government Code, §404.095. The repeal of Chapter 16 will be effective as of the date the new Chapter 15 rules take effect.

No comments were received regarding adoption of the repeal.

The repeal of Chapter 16 is adopted under Government Code, §404.095, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Electronic Funds Transfer of Certain Payments under Government Code, §404.095.

The repeal of Chapter 16 is pursuant to Government Code, §404.095.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2013.

TRD-201301485
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: May 2, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER G. ENFORCEMENT

40 TAC §98.105

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §98.105, concerning administrative penalties, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements. Section 98.105 is adopted without changes to the proposed text as published in the January 11, 2013, issue of the *Texas Register* (38 TexReg 235).

The purpose of the new section is to implement Senate Bill 223, 82nd Legislature, Regular Session, 2011, which added provisions to the Texas Human Resources Code (THRC), Chapter 103, to allow DADS to assess an administrative penalty against an adult day care facility that violates licensing requirements. The new section allows DADS to impose an administrative penalty on an adult day care facility if the facility violates a rule, standard, or order under THRC Chapter 103 or 40 TAC Chapter 98, Adult Day Care and Day Activity and Health Services Requirements, or the term of a license issued under Chapter 98.

Administrative penalties in new §98.105 range from $100 to $500, depending on the classification of a violation. The administrative penalties associated with each violation are designed to deter potential facility violations.

DADS received no comments regarding adoption of the new section.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2013.

TRD-201301477
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 1, 2013
Proposal publication date: January 11, 2013
For further information, please call: (512) 438-4466

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §311.5(d)

Type of License	1 Year Fee	2 Year Fee	3 Year Fee
Adoption Program Personnel	$25		
Announcer	$35		
Apprentice Jockey	$75		
Assistant Farrier/Plater/Blacksmith	$25		
Assistant Starter	$25		
Assistant Trainer	$100		
Assistant Trainer/Owner	$100		
Association Assistant Management	$50		
Association Management Personnel	$75		
Association Officer/Director	$100		
Association Other	$75		
Association Staff	$35		
Association Veterinarian	$75		
Authorized Agent	$15		
Chaplain	$25		
Chaplain Assistant	$25		
Equine Dental Provider	$100		
Exercise Rider	$25		
Farrier/Plater/Blacksmith	$75		
Groom/Hot Walker	$25		
Jockey	$100	$200	$300
Jockey Agent	$100		
Kennel	$75		
Kennel Helper	$25		
Kennel Owner	$100	$200	$300
Kennel Owner/Owner	$100	$200	$300
Kennel Owner/Owner-Trainer	$100	$200	$300
Kennel Owner/Trainer	$100	$200	$300
Lead-Out	$25		
Maintenance	$35		
Medical Staff	$35		
Miscellaneous	$25		
Multiple Owner	$35	$70	$105
Mutuel Clerk	$35		
Mutuel Other	$35		
Owner	$100	$200	$300
Owner-Trainer	$100	$200	$300

Pony Person	$25		
Racing Industry Representative	$100		
Racing Industry Staff	$30		
Racing Official	$50		
Security Officer	$30		
Stable Foreman	$50		
Tattooer	$100		
Test Technician	$25		
~~Tooth Floater~~	~~$100~~		
Trainer	$100	$200	$300
Training Facility Employee	$30		
Training Facility General Manager	$50		
Valet	$25		
Vendor Concessionaire	$100		
Vendor/Concessionaire Employee	$30		
Vendor Totalisator	$500		
Vendor/Totalisator Employee	$50		
Veterinarian	$100	$200	$300
Veterinarian Assistant	$30		

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed settlement if the comments disclose facts or considerations that indicate the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Brooks Special Company and Jerry Barth v. State of Texas,* Cause No. 03-12-00504-CV; Court of Appeals for the Third District at Austin.

Background: This is an appeal of a judgment entered in an environmental enforcement suit. The State of Texas brought this suit against Brooks Special Company and Jerry Barth concerning underground storage tanks at a service station in Brownsville, Texas. The trial court rendered judgment for $1,026,000.00 in civil penalties and $16,875.00 in attorney's fees against Jerry Barth and Brooks Special Company, jointly and severally.

Proposed Settlement: The parties have agreed to vacate the judgment of the trial court and enter an agreed final judgment that includes the following provisions: a permanent injunction that requires Jerry Barth to permanently remove the underground storage tanks at the property; civil penalties in the amount of $1,026,000.00 against Brooks Special Company; and attorney's fees in the amount of $16,875.00 against Brooks Special Company and Jerry Barth, jointly and severally.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Mark A. Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201301561
Katherine Cary
General Counsel
Office of the Attorney General
Filed: April 17, 2013

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Capital Area Rural Transportation System

Request for Proposals

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the construction of a Vehicle Maintenance Center in Bastrop County, Texas.

Request for Proposals and construction documents will be available at the CARTS Headquarters, located at 2010 E. 6th, Austin, Texas 78702-6050, beginning at 2:00 p.m., Tuesday, April 23, 2013. A $200 refundable deposit, check payable to CARTS, will be required for each set, with a maximum of four (4) sets per company.

A non-mandatory pre-proposal meeting will be held at the same address at 2:00 p.m., April 30, 2013.

The schedule is:

Tuesday, April 23, 2013, 2:00 p.m. - Request for Proposals Documents/CDs ready to be picked up by contractors

Tuesday, April 30, 2013, 2:00 p.m. - Pre-proposal conference at CARTS

Tuesday, May 14, 2013, 2:00 p.m. - Deadline for proposal questions

Friday, May 17, 2013 - Responses distributed via electronic mail only

Thursday, May 23, 2013, 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-201301479
Michelle Maronde
Assistant General Manager, Finance and Administration
Capital Area Rural Transportation System
Filed: April 11, 2013

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - March 2013

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period March 2013 is $70.70 per barrel for the three-month period beginning on December 1, 2012, and ending February 28, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of March 2013 from a qualified Low-Producing Oil Lease is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined as required by Tax Code, §201.059, that the average taxable price of gas for reporting period March 2013 is $2.71 per mcf for the three-month period beginning on December 1, 2012, and ending February 28, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2013 from a qualified Low-Producing Well is eligible for 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of March 2013 is $92.96 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude

total revenue received from oil produced during the month of March 2013 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of March 2013 is $3.77 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of March 2013 from a qualified low-producing gas well.

TRD-201301478
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: April 11, 2013

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Notice of Loan Fund Availability and Request for Applications

Pursuant to: (1) the LoanSTAR Revolving Loan Program of the Texas State Energy Plan (SEP) in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.) as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; and (3) Texas Administrative Code, Title 34, Chapter 19, Subchapter D, Loan Program for Energy Retrofits; the Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) announces its Notice of Loan Fund Availability (NOLFA) and Request for Applications (RFA #BE-G8-2013) and invites applications from eligible interested nonprofit Community-based organizations (a nonprofit corporation or association that is located in close proximity to the population the organization serves) or Houses of Worship (a nonprofit corporation or association that: (A) is operated through a religious or denominational organization, including an organization that is operated for religious, educational, or charitable purposes and that is operated, supervised, or controlled, wholly or partly, by or in connection with a religious organization; or (B) clearly demonstrates through the organization's mission statement, policies, or practices that the organization is guided or motivated by religion) for loan assistance to perform building energy efficiency and retrofit activities.

Program Summary: This Texas LoanSTAR (Saving Taxes and Resources) Pilot Program is not part of the federally-financed stimulus program. This Pilot Program is intended to finance energy-related cost-reduction retrofits for facilities owned and occupied by nonprofit community-based organizations and Houses of Worship. The loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows applicants to repay loans through the stream of energy cost savings realized from the projects.

Approximately $250,000 in LoanSTAR funds may be available in the form of the building efficiency and retrofit revolving loan funds. The maximum loan size for this NOLFA/RFA is $25,000. SECO may make more than one award of a loan under this NOLFA/RFA. The loan interest rate for this NOLFA/RFA announcement is 5.0% fixed. There are no additional origination or servicing fees. The loan repayment term for the energy efficiency measures will be five (5) years.

Contact: Parties interested in submitting an application should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. This NOLFA/RFA will be available on Friday, April 26, 2013, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter. The Comptroller will make the loan application, loan application information, and a sample loan agreement available electronically on the SECO website at: http://www.seco.cpa.state.tx.us/funding/ after 10:00 a.m. CT on Friday, April 26, 2013.

Non-mandatory Webinar: SECO will present a non-mandatory, informational webinar regarding this NOLFA/RFA on May 29, 2013. Further information regarding this webinar will be posted on the SECO website at: http://www.seco.cpa.state.tx.us/funding/.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. CT on June 7, 2013. Prospective applicants are encouraged to send questions via email to contracts@cpa.state.tx.us or fax to (512) 463-3669 to ensure timely receipt. On or about June 14, 2013, or as soon thereafter as practical, the Comptroller expects to post responses to the timely submitted inquiries and questions on the SECO website (http://seco.cpa.state.tx.us/funding/nolfa/5FIVE25/).

Closing Date: Applications must be delivered in the Issuing Office to the attention of Jason C. Frizzell, Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Friday, June 28, 2013. Late Applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

Application Requirements and Eligibility: Eligible entities may apply for a loan under the LoanSTAR revolving loan program, administered by Comptroller and SECO. Applicants must meet eligibility requirements.

As part of the application process, applicants shall submit one (1) original and five (5) bound copies of the loan application with attachments.

Evaluation Criteria: Loan applications will be evaluated under the general criteria outlined in the application and instructions. Comptroller reserves the right to accept or reject any or all applications submitted. Comptroller is not obligated to execute a loan agreement on the basis of this NOLFA/RFA. Comptroller shall not pay for any costs incurred by any entity in responding to this NOLFA/RFA. Comptroller and SECO may request additional information at any time if deemed necessary for further evaluation.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - April 26, 2013, after 10:00 a.m. CT; Non-mandatory Webinar - May 29, 2013; Questions Due - June 7, 2013, 2:00 p.m. CT; Official Responses to Questions posted - June 14, 2013, or as soon thereafter as practical; Applications Due - June 28, 2013, 2:00 p.m. CT; Loan Agreement Execution - July 19, 2013 or as soon thereafter as practical.

TRD-201301559
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 17, 2013

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Notice of Loan Fund Availability and Request for Applications

Pursuant to: (1) the LoanSTAR (Saving Taxes and Resources) Revolving Loan Program of the Texas State Energy Plan (SEP) in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.), as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305 of the Texas Government Code; and (3) Texas Administrative Code, Title 34, Chapter 19, Subchapter D, Loan Program for Energy Retrofits; the Texas Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) announces its Notice of Loan Fund Availability (NOLFA) and Request for Ap-

plications (RFA #BE-G9-2013) and invites applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities.

PROGRAM SUMMARY: The Texas LoanSTAR Revolving Loan Program finances energy-related cost-reduction retrofits for eligible public sector institutions. Low interest rate loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows loan recipients to repay loans through the stream of energy cost savings realized from the projects.

FUNDS AVAILABLE AND LOAN TERM: Approximately $40 million in LoanSTAR funds may be available in the form of the building efficiency and retrofit revolving loan funds. The anticipated maximum amount of funds available for each loan is $7,500,000.00. SECO may make more than one award of a loan and may make more than one award of a loan to a single loan recipient with this NOLFA/RFA announcement. The interest rate to be charged to loan recipients for this NOLFA/RFA announcement is 2.0% fixed. The loan term will be equal to the composite simple payback term for the energy efficiency measures.

ELIGIBILITY CRITERIA: Eligible public sector institutions include the following: (1) any state department, commission, board, office, institution, facility, or other agency; (2) a public junior college or community college; (3) an institution of higher education as defined in §61.003 of the Texas Education Code; (4) units of local government including a county, city, town, a public or non-profit hospital or health care facility; (5) a public school; or (6) a political subdivision of the state.

Utility dollar savings are the most important criterion for determining if the measure can be considered an eligible Energy Cost Reduction Measure (ECRM). ECRMs are not limited to those activities that save units of energy. An ECRM could conceivably call for actions which save no energy or consume additional BTUs, but save utility budget dollars. Examples of such ECRMs include demand reduction, increased power factor, load shifting, switching utility rate structures, and thermal storage projects.

Projects financed by LoanSTAR must have a composite simple payback of ten (10) years or less. In addition, each ECRM and Utility Cost Reduction Measure (UCRM) must have a simple payback that does not exceed the estimated useful life (EUL) of the ECRM or UCRM. Loan recipients have the option of buying down specific energy-related cost-reduction projects so that paybacks can meet both the individual and composite loan term limits. SECO encourages Applicants to consider renewable energy technologies when evaluating ECRMs and UCRMs.

Before entering into a LoanSTAR loan agreement, Applicants are required to submit an Energy Assessment Report (EAR) for Design-Bid-Build Projects and Design-Build Projects, or a Utility Assessment Report (UAR) for Energy Savings Performance Contracts, or a Systems Commissioning Report in the case where the commissioning meets LoanSTAR payback requirements. All LoanSTAR projects must be reviewed and analyzed by a professional engineer licensed in the State of Texas (Engineer). The Engineer shall be selected by the Applicant.

When an Engineer analyzes a project; he/she shall submit the details of his/her analysis in the form of an EAR for Design-Bid-Build Projects and Design-Build Projects, or a UAR for Energy Savings Performance Contracts. The EAR shall be prepared in accordance with the LoanSTAR Technical Guidelines (http://seco.cpa.state.tx.us/ls/guidelines/) prescribed format. The UAR shall be prepared in accordance with the SECO Performance Contracting Guidelines (http://seco.cpa.state.tx.us/perf-contract/) prescribed format. There is not a prescribed format for Systems Commissioning Reports.

Project descriptions and calculations contained within the EAR, the UAR, and the Systems Commissioning Reports must be reviewed and approved by SECO before project financing is authorized.

Project designs for Design-Bid-Build must be reviewed and approved by SECO before construction can commence. Design-Build project designs must be sufficiently complete to be reviewed and approved by SECO before construction can commence. Design-Bid-Build, Design-Build, and Energy Savings Performance Contracts are monitored during the construction phase and at project completion.

Post-retrofit energy savings should be monitored by the Applicant in Design-Bid-Build and Design-Build projects to ensure that energy cost savings are being realized. The level of monitoring may range from utility bill analysis to individual system or whole building metering, depending on the size and types of retrofits installed.

For Energy Savings Performance Contracts, a Measurement and Verification (M+V) plan must be developed and approved by SECO. Post construction measurement and verification costs must be included as part of the total project cost when calculating the payback.

Additional LoanSTAR funds can be borrowed for metering of large, complex retrofits in order to maximize the probability of achieving, or exceeding, calculated savings; however, the maximum allowable loan amount, including the cost of the metering, cannot be exceeded.

APPLICATION REQUIREMENTS: Comptroller will make the loan application, instructions, and a sample loan agreement with attachments available for review electronically on the SECO website at: http://www.seco.cpa.state.tx.us/funding/ after 10:00 a.m. CT on Friday, April 26, 2013.

The loan application must: (1) be complete; (2) be submitted under a signed transmittal letter; (3) include an executive summary and a table of contents; and (4) describe the project and personnel qualifications relevant to the evaluation criteria. Applications must also meet the following program requirements:

* The maximum loan amount shall not exceed $7.5 million.

* The interest rate is set at 2.0%.

* The loan repayment term is equal to the Total Loan Payback for Design-Bid-Build and Design-Build projects and the Total Project Payback for Energy Savings Performance Contracts. The individual ECRM/UCRM must demonstrate a simple payback of less than the ECRM's/UCRM's estimated useful life.

* Project expenses will be reimbursed on a "cost reimbursement" basis.

* Loan recipient will be required to comply with federal Solid Waste Disposal Act, and, if applicable, National Environmental Policy Act, and National Historic Preservation Act. Loan recipients will ensure that the State Historical Preservation Office (SHPO) is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to ensure that the historical significance of the building will be preserved. All requirements are set out in the sample contract.

* SECO will conduct periodic on-site monitoring visits on all building retrofit projects.

* All improvements financed through the LoanSTAR Revolving Loan Program shall meet minimum efficiency standards (as prescribed by applicable building energy codes). Examples of projects that are acceptable may include:

* Building and mechanical system commissioning and optimization

* Energy management systems and equipment control automation

* High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects

* High efficiency lighting fixtures and lamps

* Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof)

* Load Management Projects

* Energy Recovery Systems

* Low flow plumbing fixtures, high efficiency pumps

* Systems commissioning

* Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as rooftop solar water and space heating systems, geothermal heat pumps (only closed-loop systems with no greater than 10 ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems. If there are closed-loop geothermal heat pumps greater than 10 ton capacity involved, then Applicants will be responsible for further National Environmental Policy Act (NEPA) review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, Applicants will be responsible for further NEPA review by DOE.

Applicants shall submit one (1) original, five (5) bound copies, and one (1) electronic copy of the loan application, as well as of one of the following documents:

1. Project Assessment Commitment. The Project Assessment Commitment can be used for Design-Bid-Build and Design-Build projects, for Energy Savings Performance Contracts, or for Commissioning projects. The Project Assessment Commitment shall be signed by the applicant's Chief Financial Officer or equivalent;

2. Preliminary Energy Assessment (PEA). A PEA can be used for Design-Bid-Build and Design-Build projects, for Energy Savings Performance Contracts, or for Commissioning projects. The PEA must be completed by a Professional Engineer licensed in the State of Texas. PEAs must include Energy Cost Reduction Measure (ECRM) or Utility Cost Reduction Measure (UCRM) that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM and UCRM in the PEA;

3. Energy Assessment Report (EAR). An EAR can be used for Design-Bid-Build and Design-Build projects;

4. Utility Assessment Report (UAR). The UAR can be used for Energy Savings Performance Contracts; or

5. Commissioning Report for Commissioning projects.

While the Project Assessment Commitment and the PEA will qualify the project for potential funding, an approved EAR, UAR or Commissioning Report will be required prior to execution of a loan agreement.

ISSUING OFFICE: Parties interested in submitting an application should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, at: 111 E. 17th St., Room 201, Austin, Texas 78774 or via phone at (512) 305-8673. This NOLFA/RFA will be available on Friday, April 26, 2013, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter.

NON-MANDATORY WEBINAR: SECO will present a non-mandatory, informational webinar regarding this NOLFA/RFA on May 14, 2013. Further information regarding this webinar will be posted on the SECO website at: http://www.seco.cpa.state.tx.us/funding/.

QUESTIONS: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. (CT) on May 17, 2013. Prospective applicants are encouraged to send Questions via email to contracts@cpa.state.tx.us or fax to (512) 463-3669 to ensure timely receipt. On or about May 24, 2013, or as soon thereafter as practical, Comptroller expects to post responses to the questions received by the deadline on the website referenced above. Late Questions will not be considered under any circumstances.

CLOSING DATE: Applications must be delivered in the Issuing Office to the attention of Jason C. Frizzell, Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on June 7, 2013. Late Applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

EVALUATION CRITERIA: Loan Applications will be evaluated under the general criteria outlined in the application and instructions. Comptroller reserves the right to accept or reject any or all applications submitted. Comptroller is not obligated to execute a loan agreement on the basis of this NOLFA/RFA. Comptroller shall not pay for any costs incurred by any entity in responding to this NOLFA/RFA. Comptroller and SECO may request additional information at any time if deemed necessary for further evaluation.

A Loan Application, submitted through a NOLFA/RFA process, must be reviewed by the SECO legal counsel before a loan can be considered. Applications that meet minimum qualifications are distributed to the members of the Evaluation Committee for their independent review and evaluation. The Evaluation Committee will review and individually score each written application. The Evaluation Committee has the option of selecting the top scoring applications and may, but is not required to, call the top scoring Applicants to come to SECO offices in Austin, Texas for an interview. The Evaluation Committee may, in its sole discretion, proceed directly to Applicant scoring and selection without the necessity of any oral interviews.

Applicants who submit a project assessment commitment or a PEA will receive a Memorandum of Understanding (MOU) from SECO. The sole purpose of the MOU is to reserve LoanSTAR funds for the successful Applicant during the period the EAR, UAR, or Commissioning Report is being prepared. This document should not be construed as a loan approval and does not authorize the expenditure of funds for LoanSTAR projects. LoanSTAR project expenditures cannot be incurred before the effective date cited in a fully-executed loan agreement unless those expenditures are approved in the LoanSTAR Technical Guidelines. Commitment of funding to applicants will take place upon execution of the MOU. Those applicants must then submit an EAR, UAR, or Commissioning Report by the date identified in the MOU.

The EAR, UAR or Commissioning Report shall be prepared by Engineer. The EAR and UAR shall be prepared in accordance with the guidelines and formats described above. A selected Applicant's CFO will also certify that three (3) original bound copies and one (1) electronic copy of the completed reports will be delivered to SECO for review within the required submittal date. The submitted EAR, UAR, or Commissioning Report will then be reviewed by the SECO technical staff or its contractor. The technical staff may request Engineer to provide additional information or calculations. If the report is not submitted within any Loan Application time constraints, SECO may, in its sole discretion, choose to withdraw the loan offer.

LOAN AGREEMENT: SECO will attempt to negotiate a Loan Agreement with any selected Applicants after the EAR, UAR, or Commissioning Report has been reviewed and approved. The reports must be deemed to comply with LoanSTAR Technical Guidelines for EARs and SECO Performance Contracting Guidelines for UARs in order to move forward with the preparation of a Loan Agreement.

A fully-executed Loan Agreement authorizes the selected Applicant to proceed with the design of their projects and includes guaranteed funding for the ECRMs stated in the approved EAR, UAR or Commissioning Report. If a Loan Agreement cannot be successfully negotiated within a reasonable period of time, negotiations will be terminated, and negotiations with the next highest ranking Applicant may commence. The process may continue until one or more Loan Agreements are signed or the loan offer is withdrawn. SECO may at any time, upon failure of negotiations, choose to reissue or withdraw the loan offer rather than continue with negotiations. If SECO decides, in its sole discretion, to award more than one loan, SECO may proceed with negotiations in the above-described manner with more than one Applicant simultaneously.

DESIGN-BID-BUILD AND DESIGN-BUILD DESIGN AND REVIEW PROCESS: After a Loan Agreement has been executed, Applicant can begin the process of designing and implementing the projects identified in the report. Applicant agrees that bidding and construction activities shall not begin until after Applicant received SECO approval that the submitted designs conform to LoanSTAR Technical Guidelines. Applicants agree to competitively select contractors or bidders as required by Texas state law.

A design-bid-build process includes two milestones.

1. Selecting a design engineer. The engineer selected to design the projects can be the Engineer who prepared the Energy Assessment Report; however, Applicant must follow competitive procedures, based upon qualifications, to select the design engineer.

2. Preparing the design documents. Applicant must submit Design Development Reports and Detailed Design Reports (Volume I, Appendix L of the LoanSTAR Technical Guidelines) to SECO for technical review and approval. The SECO Technical Review will ensure that the design specifications match the projects identified in the report.

i. Design Development Report (50%) - This design review report will be completed when the design process is approximately 50% complete and will verify that the design is proceeding in a direction which conforms with the approved EAR.

ii. Detailed Design Review Report (100%) - This design review report will verify that the completed design conforms to the intent of the approved energy assessment. In addition, it will evaluate the proposed schedule and estimated project construction budget provided by the design engineer.

A design-build process includes two milestones.

1. Selecting a design Engineer. The engineer selected to design the projects can be the Engineer who prepared the Energy Assessment Report; however, Applicant must follow competitive procedures, based upon qualifications, to select the Engineer.

2. Preparing the design documents. Applicant must submit Design Development Reports and Detailed Design Reports (Volume I, Appendix L of the LoanSTAR Technical Guidelines) to SECO for technical review and approval. The SECO Technical Review will ensure that the design specifications match the projects identified in the report.

i. Design Development Report (50%) - This design review report will be completed when the design process is approximately 50% complete and will verify that the design is proceeding in a direction which conforms with the approved EAR.

ii. Detailed Design Review Report - This design review report will verify that the design is sufficiently complete to determine that the project conforms to the intent of the approved energy assessment. In addition, the reviewer will evaluate the proposed schedule and estimated project construction budget provided by the design engineer. Any subsequent design elements completed after this review shall be forwarded to SECO to ensure the additional design elements meet the LoanSTAR Technical Guideline requirements.

ENERGY SAVINGS PERFORMANCE CONTRACTING DESIGN REVIEW PROCESS: There is no design review process for Energy Savings Performance Contracts unless a system commissioning is a component of that program.

SYSTEMS COMMISSIONING REVIEW PROCESS: Systems commissioning may be part of a Design-Bid-Build project, a Design-Build project, an Energy Savings Performance Contracting project or it may be a stand-alone activity. To be considered as an ECRM/UCRM or a stand-alone activity, the Systems Commissioning Report must be reviewed and approved by SECO prior to loan execution.

Commissioning activities typically include surveying, interviewing, baseline measurements and analyses, definition of problems, definition of solutions, implementation of solutions, balancing, and verification measurements. Some of these steps may be repeated as necessary to optimize systems operations. In some cases system considerations extend beyond just the equipment installed under the LoanSTAR ECRMs. This is to ensure that total building system effects are comprehended and optimized. Since both heating and cooling systems are usually involved in this process, optimization activities may extend over a six-month period or longer. Documentation of findings and corrections, along with recommended operating procedures should be provided by the commissioning organization.

NOTIFICATION UPON PARTIAL AND FULL COMPLETION: Applicant agrees to promptly notify SECO in writing when the project reaches 50% completion. Upon notification, SECO shall perform a construction monitoring visit to ensure the project complies with the LoanSTAR Technical Guidelines or SECO Performance Contracting Guidelines. After the construction monitoring visit, SECO will provide Applicant with a copy of the On-Site Construction Monitoring Report. This report will provide a general overview of construction site activities and will address issues of budget, schedule, and conformance of the work with the design documents and will make recommendations concerning any necessary changes in scope or budget.

Applicant agrees to promptly notify SECO in writing when the project reaches 100% completion. Upon notification, SECO shall perform a construction monitoring visit to ensure the completed project complies with the LoanSTAR Technical Guidelines or SECO Performance Contracting Guidelines. After the construction monitoring visit, SECO will provide the Applicant with a copy of the Final Monitoring Report. This report focuses on compliance by the construction contractor with the "close-out" documentation requirements outlined in the bid documents. The report will verify that guarantees, warrantees, releases, O&M manuals, training sessions required, etc. have been provided by the contractor. Applicant shall then certify with a written letter that materials and equipment to be replaced have been properly disposed. These materials would include, but not be limited to, light bulbs, ballasts, switches, controls, HVAC equipment, refrigerants, pumps, fans, blowers, piping, valves, conduit, wiring, and boilers. Certification shall include proper disposal of hazardous materials. All waste disposals must be conducted in compliance with local, State of Texas, and federal rules and regulations. Upon completion of the project and acceptance by SECO, Applicant will submit a Final Completion Report to SECO (LoanSTAR Technical Guidelines) and a final voucher request.

REPAYMENT PROCESS: After submittal of the Final Completion Report to SECO and the final voucher request, Applicant shall request a Loan Repayment Schedule from SECO, which contains the outstanding loan balance, the term of the loan, and the schedule of quarterly payments to SECO. SECO forwards the Loan Repayment Schedule to

Applicant based on the incurred loan amount. The outstanding loan balance consists of the borrowed dollars plus the interest accrued on the borrowed dollars. Interest begins accruing on the borrowed dollars when Applicant receives that money. The interest continues to accrue until the date of the first scheduled loan repayment. The term of the loan is equal to the simple project payback that was provided in the EAR, UAR, or Commissioning Report. The term is determined by dividing the total project borrowed amount by the annual energy cost savings projected in the EAR, UAR or Commissioning Report. The schedule of quarterly payments will contain equal payments. Loan repayments will begin within sixty (60) days of project completion. The payments are due at the end of each fiscal quarter, using the State's fiscal calendar. Payments are due regardless of whether Applicant has achieved that level of energy savings and do not vary according to the actual energy savings.

SCHEDULE OF EVENTS: The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - April 26, 2013, after 10:00 a.m. CT; Non-Mandatory Webinar, May 14, 2013; Questions Due - May 17, 2013, 2:00 p.m. CT; Official Responses to Questions posted - May 24, 2013, or as soon thereafter as practical; Applications Due - June 7, 2013, 2:00 p.m. CT; Loan Commitment and/or Agreement Execution - as soon as practical.

TRD-201301560
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 17, 2013

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Notice of Request for Proposals

Pursuant to Chapter 403, Chapter 206 and Chapter 2254, Subchapter B of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 206f ("RFP") to solicit proposals from qualified, independent financial services firms, who specialize in the field of indirect cost recovery and cost allocation planning for governmental units. Successful respondent will provide Comptroller with the services associated with preparing Comptroller's annual data processing cost allocation plan and update as set forth in Chapter 2106 of the Texas Government Code for presentation, review, and approval by the Division of Cost Allocation of the U.S. Department of Health and Human Services. Each year's plan will be based on allocation data and actual expenditures incurred by Comptroller during the applicable fiscal year. The cost allocation plan must enable the state to recover the maximum indirect costs possible from federal programs. The successful respondent will be expected to begin performance of the contract on or after September 1, 2013.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: http://esbd.cpa.state.tx.us on Friday, April 26, 2013, after 10:00 a.m. CT. Parties interested in a hard copy of the RFP should contact Jennifer W. Sloan, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, May 10, 2013. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or email Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Wednesday, May 15, 2013, Comptroller expects to post responses to questions to the ESBD.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT on Friday, May 31, 2013. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award resulting from the RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - April 26, 2013, after 10:00 a.m. CT; Questions Due - May 10, 2013, 2:00 p.m. CT; Official Responses to Questions posted - May 15, 2013, or as soon thereafter as practical; Proposals Due - May 31, 2013, 2:00 p.m. CT; Contract Execution - June 21, 2013, or as soon thereafter as practical; and Commencement of Project Activities - on or after September 1, 2013. Any amendment to this solicitation will be posted on the ESBD as an RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201301556
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 17, 2013

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Office of Consumer Credit Commissioner

Notice of Cancellation of Request for Proposals for Grant Program Management Services

The Office of Consumer Credit Commissioner has decided to retract the Request for Proposal for Grant Program Management Services published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2530) due to prohibitions and will resubmit upon approval for public distribution.

If you have questions, please contact Dana Edgerton directly at (512) 936-7639 or dana.edgerton@occc.state.tx.us. The Office of Consumer Commissioner would like to take this time to thank you for your interest in the proposal process.

TRD-201301526
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 16, 2013

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/15/13 - 04/21/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/15/13 - 04/21/13 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/13 - 05/31/13 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/13 - 05/31/13 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201301523
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 16, 2013

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from InTouch Credit Union (Plano) seeking approval to merge with Dr. Pepper Employees Federal Credit Union (Plano). InTouch Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201301546
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 17, 2013

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Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Amarillo Postal Employees Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school and businesses located within a 20 (twenty) mile radius of Amarillo Postal Employees Credit union at 2400 Hobbs Road, Amarillo, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201301545
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 17, 2013

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Brazos Valley Schools Credit Union (#3), Katy, Texas (Amended) - Persons who live, worship, work or attend school within the geographical boundaries of Bryan ISD, College Station ISD, Brenham ISD or Burton ISD.

Application for a Merger or Consolidation - Approved

District 1 THD Credit Union (Paris) and Northeast Texas Teachers Federal Credit Union (Paris) - See *Texas Register* issue dated December 7, 2012.

TRD-201301547
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 17, 2013

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Employees Retirement System of Texas

Request for Proposal to Underwrite and Administer Long-Term Care Insurance Benefits for the Texas Employees Group Benefits Program

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") seeking qualified Carriers to offer, underwrite and administer Long-Term Care Insurance Benefits ("LTC") for participants of the Texas Employees Group Benefits Program ("GBP") and their dependents for an initial term beginning January 1, 2014, through December 31, 2017. The selected Carrier shall provide services for the level of benefits required in the RFP and meet other requirements that are in the best interests of ERS, the GBP, its Participants (as defined in the GBP) and the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

A Carrier wishing to respond to this Request shall: 1) Maintain its principal place of business and provide all products and/or eligibility, claims processing and programming, etc. within the United States of America; 2) Have a current, valid Certificate of Authority and/or current license to do business from the Texas Secretary of State; 3) Have a current, valid license with the Texas Department of Insurance ("TDI"); 4) Be in good standing with all agencies of the state of Texas, including TDI; 5) Have been providing coverage, administrative services, and claim processing to group benefits plans, at least one of which will have an enrollment of 10,000 covered employees working in multiple locations; 6) Have a current net worth of $50 million as demonstrated by audited financial statements as of the close of the Carrier's most re-

cent fiscal year; and 7) Have the capability to provide all reports and supporting documentation electronically and in CD-ROM format.

The RFP will be available on or after May 2, 2013, from ERS' website and will include documents for the Carrier to review and respond. To access the secured RFP, an interested Carrier shall email its request to the attention of iVendor Mailbox at: **ivendorquestions@ers.state.tx.us.** The email request shall reflect: 1) Carrier's legal name, and 2) Point of contact's full name, physical address, phone and fax numbers, and email address. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP.

General questions concerning the RFP and/or ancillary bid materials should be sent to the iVendor Mailbox where the responses, if applicable, are updated frequently. Submission deadline for all RFP questions submitted to the iVendor Mailbox will be due on May 17, 2013, at 4:00 p.m., C.T.

To be eligible for consideration, the Carrier is required to submit a total of six (6) sets of the Proposal in a sealed container in accordance with the instructions set forth in the RFP. All materials shall be received by ERS no later than 12:00 noon C.T., on June 27, 2013.

ERS will base its evaluation and selection of a Carrier on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with and adherence to the RFP, minimum and preferred requirements as specified, fee proposal and other relevant criteria. Each Proposal will be evaluated both individually and relative to the Proposals of other qualified Carriers. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation of the RFP. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interest of ERS, the GBP, its Participants and the state of Texas.

TRD-201301516
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: April 15, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 28, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. May 28, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Alldoc's, Incorporated dba All Doc's; DOCKET NUMBER: 2012-2526-PST-E; IDENTIFIER: RN101750776; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the product piping associated with the UST system; PENALTY: $7,630; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Asmara Enterprises, Incorporated dba Country Express Exxon; DOCKET NUMBER: 2012-2334-PST-E; IDENTIFIER: RN102457231; LOCATION: Naples, Morris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $8,961; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: B.C.A.H. Property Management, LLC and ABISB, LP; DOCKET NUMBER: 2013-0103-EAQ-E; IDENTIFIER: RN102924438; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial properties; RULE VIOLATED: 30 TAC §213.4(k) and Water Pollution Abatement Plan (WPAP) Registration Number 13-02102302, Special Conditions Number II, by failing to construct the sand filtration basin as specified in the WPAP; and 30 TAC §213.4(k) and WPAP Registration Number 13-02102302, Standard Conditions Number 17, by failing to maintain the best management practices; PENALTY: $2,925; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Billy Clouse dba Gas-N-Go; DOCKET NUMBER: 2012-2443-PST-E; IDENTIFIER: RN101642387; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A)

and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,888; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Moulton; DOCKET NUMBER: 2012-2730-MWD-E; IDENTIFIER: RN102916129; LOCATION: Moulton, Lavaca County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010227001, Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010227001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2012, by September 1, 2012; PENALTY: $12,325; Supplemental Environmental Project offset amount of $9,860 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: City of Pyote; DOCKET NUMBER: 2012-2347-PWS-E; IDENTIFIER: RN101389179; LOCATION: Pyote, Ward County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and Texas Health and Safety Code, §341.033(a), by failing to collect routine distribution water samples for coliform analysis and by failing to post public notification of the failure to collect routine distribution water samples; PENALTY: $1,620; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: City of Rogers; DOCKET NUMBER: 2012-2451-MWD-E; IDENTIFIER: RN102184678; LOCATION: Rogers, Bell County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010804001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §30.350(d) and (j) and §305.125(1) and TPDES Permit Number WQ0010804001, Other Requirements Number 1, by failing to employ at least one licensed operator who holds a category D license or higher; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and TPDES Permit Number WQ0010804001, Final Effluent Limitations and Monitoring Requirements Number 7, by failing to comply with permitted effluent limitations for the monitoring periods ending May 31, 2012 - September 30, 2012; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010804001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports by the 20th day of the following month for the monthly monitoring periods ending December 31, 2011, January 31, 2012, and July 31, 2012; PENALTY: $13,188; Supplemental Environmental Project offset amount of $10,551 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Copperas Cove Independent School District; DOCKET NUMBER: 2013-0087-PST-E; IDENTIFIER: RN101667103; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Dharell G. Campbell, Jr.; DOCKET NUMBER: 2012-2545-WOC-E; IDENTIFIER: RN103539995; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: unlicensed solid waste facility supervisor; RULE VIOLATED: 30 TAC §30.5(a) and TWC, §37.003, by failing to obtain a license issued by the commission before engaging in an activity, occupation, or profession for which a license is required; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(10) COMPANY: John Pavlis dba Exxon RS 64935; DOCKET NUMBER: 2013-0114-PST-E; IDENTIFIER: RN102652005; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Jon Zertuche; DOCKET NUMBER: 2012-2258-LII-E; IDENTIFIER: RN106463649; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; PENALTY: $952; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: MAKNOJIA ROSHAN INVESTMENT, LLC dba Hammond Kountry Store; DOCKET NUMBER: 2012-2618-PST-E; IDENTIFIER: RN102044468; LOCATION: Calvert, Robertson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Manuel Martinez dba Economy Store; DOCKET NUMBER: 2012-2516-PST-E; IDENTIFIER: RN102347028; LOCATION: Zapata, Zapata County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: Montgomery County Utility District Number 2; DOCKET NUMBER: 2012-2427-MWD-E; IDENTIFIER: RN103794178; LOCATION: Conroe, Montgomery County; TYPE

OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011271001, Interim Effluent Limitations and Monitoring Requirements Number 1 and Interim II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $10,062; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: RACETRAC PETROLEUM, INCORPORATED; DOCKET NUMBER: 2012-2503-PST-E; IDENTIFIER: RN102270790; LOCATION: Lindale, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: RAY HUFFINES CHEVROLET, INCORPORATED; DOCKET NUMBER: 2013-0156-PST-E; IDENTIFIER: RN102747888; LOCATION: Plano, Collin County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,956; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Saakshi, Incorporated dba Ector Food Mart; DOCKET NUMBER: 2012-2563-PST-E; IDENTIFIER: RN102902418; LOCATION: Ector, Fannin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: $3,502; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Sambour Mam dba Sunny Food Mart; DOCKET NUMBER: 2012-2728-PST-E; IDENTIFIER: RN101897502; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: SPEEDY STOP FOOD STORES, LLC dba Speedy Stop 206; DOCKET NUMBER: 2012-1793-PST-E; IDENTIFIER: RN101499267; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(e), by failing to ensure that all release detection equipment installed as part of an underground storage tank (UST) system is maintained in good operating condition; 30 TAC §334.50(b) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST system; 30 TAC §334.49(d)(1)(A) and TWC, §26.3475(d), by failing to ensure that any metal component of a UST system which is protected from corrosion by one of the electrical isolation methods remains electrically isolated by periodically inspecting and testing the metal component; and 30 TAC §334.48(a) and TWC, §26.121, by failing to prevent an unauthorized discharge of petroleum fuel into or adjacent to any water of the state; PENALTY: $43,879; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: THE CENTER SERVING PERSONS WITH MENTAL RETARDATION dba Willow River Farms; DOCKET NUMBER: 2012-2273-PWS-E; IDENTIFIER: RN101245769; LOCATION: San Felipe, Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(i) and (ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample; 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of July 2012; and 30 TAC §290.122(c)(2)(A), by failing to provide public notice of the failure to conduct triggered source monitoring; PENALTY: $525; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: TRAILSWEST MOBILE HOME PARK, LLC; DOCKET NUMBER: 2012-1117-PWS-E; IDENTIFIER: RN101182855; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the groundwater well; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; and 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; PENALTY: $976; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: Zaid, LLC dba Stop & Shop Food Mart; DOCKET NUMBER: 2012-2375-PST-E; IDENTIFIER: RN102960606; LOCATION: Flint, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201301503
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 15, 2013

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Enforcement Orders

An agreed order was entered regarding Enrique Garcia, Docket No. 2012-0064-MSW-E on March 21, 2013 assessing $3,750 in administrative penalties with $2,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-

3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Schumacher International, Inc., Docket No. 2012-1085-IHW-E on March 21, 2013 assessing $7,022 in administrative penalties with $1,404 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2012-1218-PST-E on March 21, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BLUE WATER FALL INC. dba Shop & Go, Docket No. 2012-1241-PST-E on March 21, 2013 assessing $7,256 in administrative penalties with $1,451 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hardin Fuels, Inc. Docket No. 2012-1281-AIR-E on March 21, 2013 assessing $1,275 in administrative penalties with $255 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rayburn Country Municipal Utility District, Docket No. 2012-1345-PWS-E on March 21, 2013 assessing $897 in administrative penalties with $179 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUT ENTERPRISES, LLC and Kuifs Petroleum, L.P. dba KS 28, Docket No. 2012-1470-PST-E on March 21, 2013 assessing $2,423 in administrative penalties with $484 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harold Tschirhart dba Lake McQueeny Estates, Docket No. 2012-1490-PWS-E on March 21, 2013 assessing $775 in administrative penalties with $155 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Geospatial-Intelligence Agency, Docket No. 2012-1494-PST-E on March 21, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ACTEV INC. dba Hans Gas Station, Docket No. 2012-1579-PST-E on March 21, 2013 assessing $3,825 in administrative penalties with $765 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeffrey H. Brennan dba P & B Water Corporation and Robin Cove Water Subdivision, Docket No. 2012-1665-PWS-E on March 21, 2013 assessing $1,327 in administrative penalties with $264 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Cedar Creek Fresh Water Supply District, Docket No. 2012-1698-MWD-E on March 21, 2013 assessing $4,800 in administrative penalties with $960 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Fraga dba Desert West Oil Recovery, Docket No. 2012-1741-WQ-E on March 21, 2013 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C. S. Community Water Supply Corporation, Docket No. 2012-1742-PWS-E on March 21, 2013 assessing $53 in administrative penalties with $10 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREEN LAND VENTURES, LTD., Docket No. 2012-1755-WQ-E on March 21, 2013 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rimpan, L.L.C. dba Nuway of Joaquin, Docket No. 2012-1774-PST-E on March 21, 2013 assessing $4,125 in administrative penalties with $825 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shahbaz Raza dba Stuckeys 109, Docket No. 2012-1775-PWS-E on March 21, 2013 assessing $1,237 in administrative penalties with $247 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gladewater, Docket No. 2012-1783-PWS-E on March 21, 2013 assessing $1,035 in administrative penalties with $207 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Trucking Company Incorporated, Docket No. 2012-1808-EAQ-E on March 21, 2013 assessing $6,250 in administrative penalties with $1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DALCO SOLVENTS & CHEMICALS, INC. Docket No. 2012-1817-DCL-E on March 21, 2013 assessing $5,750 in administrative penalties with $1,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PIERCE CONSTRUCTION, INC. dba Zippy JS, Docket No. 2012-1856-PST-E on March 21, 2013 assessing $5,755 in administrative penalties with $1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fresno Investments, Inc. dba 3 Way Corner Store Docket No. 2012-1876-PST-E on March 21, 2013 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny Crump dba Southend Exxon, Docket No. 2012-1885-PST-E on March 21, 2013 assessing $3,504 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Carroll dba Bethany Exxon, Docket No. 2012-1886-PST-E on March 21, 2013 assessing $4,558 in administrative penalties with $911 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Voyles, LLC dba Whispering Hills Achievement Center, Docket No. 2012-1892-PWS-E on March 21, 2013 assessing $827 in administrative penalties with $165 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wilmer, Docket No. 2012-1899-PWS-E on March 21, 2013 assessing $1,215 in administrative penalties with $243 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fayette County Water Control and Improvement District Monument Hill, Docket No. 2012-1917-PWS-E on March 21, 2013 assessing $949 in administrative penalties with $189 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodell Water System, Inc., Docket No. 2012-1946-MLM-E on March 21, 2013 assessing $937 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R K & L Company and Valley Transit Co., Inc., Docket No. 2012-1949-PST-E on March 21, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FALCON RURAL WATER SUPPLY CORPORATION, Docket No. 2012-1959-PWS-E on March 21, 2013 assessing $896 in administrative penalties with $179 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jalbhe Investment Inc. dba Go Fast Food 1, Docket No. 2012-1967-PST-E on March 21, 2013 assessing $3,880 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hitchcock, Docket No. 2012-1971-MWD-E on March 21, 2013 assessing $5,062 in administrative penalties with $1,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bay Bluff, L.P., Docket No. 2012-2001-MWD-E on March 21, 2013 assessing $3,563 in administrative penalties with $712 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2012-2020-PST-E on March 21, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANILA CORPORATION dba Best Food Market 4, Docket No. 2012-2101-PST-E on March 21, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The George R. Brown Partnership, L.P., Docket No. 2012-2165-AIR-E on March 21, 2013 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Medina County Water Control & Improvement District No. 2, Docket No. 2012-2200-MWD-E on March 21, 2013 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Columbia Medical Center of Lewisville Subsidiary, L.P., Docket No. 2012-2208-PST-E on March 21, 2013 assessing $2,949 in administrative penalties with $589 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gruver, Docket No. 2012-2210-PWS-E on March 21, 2013 assessing $517 in administrative penalties with $103 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding DANISH ENTERPRISES, INC. dba Short Stop, Docket No. 2012-2523-PST-E on March 21, 2013 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Entergy Texas, Inc. dba Conroe Service Center Docket No. 2012-2542-PST-E on March 21, 2013 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Paul Evans and Robert J. Evans Jr. dba Terrell Sand & Recycling, Docket No. 2011-1442-AIR-E on April 3, 2013 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edgar Gerald Alford and United Oilfield Construction LLC, Docket No. 2011-1442-AIR-E on April 3, 2013 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MACC Collision Repair Experts, Inc., Docket No. 2011-2120-AIR-E on April 3, 2013 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREEN LAND VENTURES, LTD., Docket No. 2011-2249-EAQ-E on April 3, 2013 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALMA DISCOUNT PACKAGE, INC. dba Alma Discount Grocery, Docket No. 2012-0023-PST-E on April 3, 2013 assessing $3,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William S. Crouch and Crouch's Cleaners, Inc., Docket No. 2012-0163-MLM-E on April 3, 2013 assessing $650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TLG Properties, Ltd., Docket No. 2012-0280-PST-E on April 3, 2013 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gayland Matejka dba Lake Limestone Store, Docket No. 2012-0314-PST-E on April 3, 2013 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ryan Branch dba Double Mountain Landscaping, Docket No. 2012-0903-LII-E on April 3, 2013 assessing $999 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cotulla, Docket No. 2012-0907-PWS-E on April 3, 2013 assessing $2,694 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KVS Business Inc. dba Food & Fuel Stop 2, Docket No. 2012-0986-PST-E on April 3, 2013 assessing $2,634 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sand Hill Foundation, LLC, Docket No. 2012-1069-AIR-E on April 3, 2013 assessing $1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zarina Enterprises, Inc. dba EZ Truck Stop, Docket No. 2012-1199-PST-E on April 3, 2013 assessing $2,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAKAH INC. dba Quick Stop FFP 3341, Docket No. 2012-1342-PST-E on April 3, 2013 assessing $7,487 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DASS INVESTMENTS, LLC dba Pepes Grocery Store, Docket No. 2012-1389-PST-E on April 3, 2013 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALIA ENTERPRISES, INC. dba Monroe Shell, Docket No. 2012-1436-PST-E on April 3, 2013 assessing $6,158 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KALI INC., Docket No. 2012-1647-PST-E on April 3, 2013 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301550
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 17, 2013

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Notice of a Proposed Amendment and Renewal of a General Permit Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ) is proposing to reissue Texas Pollutant Discharge Elimination System (TPDES) General Permit TXG830000, which authorizes the discharge of waters contaminated by petroleum fuel or petroleum substances into or adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft renewal with amendments of an existing general permit that authorizes the discharge of waters contaminated by petroleum fuel or petroleum substances into or adjacent to water in the state. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require regulated dischargers to submit a Notice of Intent (NOI) to obtain authorization for discharges.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Advisory Committee regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ Web site at *http://www.tceq.texas.gov/permitting/wastewater/general/index.html*.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, TX 78711-3087 or

electronically at *www.tceq.texas.gov/about/comments.html* within 30 days from the date this notice is published in the *Texas Register*.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific applicant name and permit number; and/or 3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our Web site at: *http://www.tceq.texas.gov*.

Further information may also be obtained by calling Laurie Fleet of the TCEQ Water Quality Division at (512) 239-5445.

Si desea información en español, puede llamar 1-800-687-4040.

TRD-201301522
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 16, 2013

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Notice of Correction to Agreed Order Number 3

In the March 29, 2013, issue of the *Texas Register* (38 TexReg 2150), the Texas Commission on Environmental Quality (commission) published a notice of Agreed Orders. Agreed Order Number 3, concerning ALKA CORPORATION dba Circle P Food Store, which appeared on page 2151, has been revised. The reference to a Supplemental Environmental Project being City of Baytown - Hospital Remediation Project at Goose Creek should instead be Angelina Beautiful Clean - Household Hazardous Waste Collection.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201301504
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 15, 2013

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Notice of District Petition

Notice issued April 12, 2013.

TCEQ Internal Control No. D-02272013-023; The George Foundation ("Petitioner") filed a petition for creation of Fort Bend County Municipal Utility District No. 207 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 279.17 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Richmond, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2012-18, passed and approved on December 17, 2012, the City of Richmond, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately $44,750,000 ($27,500,000 for utilities plus $4,000,000 for recreational facilities plus $13,250,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en es-

pañol, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201301549
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 17, 2013

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 28, 2013.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 28, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: ASMITA, INC. d/b/a Chevron Mini Mart 5; DOCKET NUMBER: 2012-2280-PST-E; TCEQ ID NUMBER: RN102492766; LOCATION: 11005 Grant Road, Cypress, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,757; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: EFFLUENT RECYCLING, INC. and Michael W. Martin; DOCKET NUMBER: 2011-1973-MLM-E; TCEQ ID NUMBER: RN101569879; LOCATION: 1010 Benjamin Street, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and an industrial hazardous waste generation storage and disposal facility; RULES VIOLATED: 30 TAC §334.47(a)(2) and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.d., by failing to either permanently remove an existing UST from service or bring the UST into timely compliance with upgrade requirements; 30 TAC §335.2(a) and (b) and§335.4 and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Numbers 2.a.i. and 2.e., by failing to prevent the discharge of wastes from tanks and containers to surface soils; 30 TAC §335.69(a)(1)(B), 40 Code of Federal Regulation (CFR) §265.190, and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.a.iii., by failing to limit storage of hazardous waste to 90 days or less; 30 TAC §335.62, 40 CFR §262.11, and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.b.ii., by failing to conduct an appropriate hazardous waste determinations on wastes generated at the facility; 30 TAC §335.2(a) and (b), §335.43(a), and 40 CFR §270.1(c), by failing to obtain authorization prior to storing hazardous waste; 30 TAC §335.112(a)(9), 40 CFR §265.192, and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.b.iv., by failing to provide a written assessment reviewed and certified by an independent qualified, registered professional engineer attesting that the storage tank and tank system at the facility has sufficient structural integrity and was acceptable for the storing and treating of hazardous waste; 30 TAC §335.112(a)(9), 40 CFR §265.193, and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.b.i., by failing to install and maintain secondary containment designed to prevent any migration of wastes or accumulated liquids out of the storage tank at the facility and into the soil, groundwater, or surface water during the use of the tank system; 30 TAC §335.112(a)(9), 40 CFR §265.195, and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number. 2.a.ii., by failing to provide documentation for inspections conducted on the storage tank system at the facility; 30 TAC §327.3(b) and §327.5(c) and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.b.v., by failing to make notifications of reportable discharges or spills into the environment within 24 hours; 30 TAC §335.112(a)(8), 40 CFR §265.173 and §265.176, and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.b.iii., by failing to close hazardous waste containers, except when necessary to add or remove waste, and by failing to locate containers holding ignitable waste at least 50 feet from the facility's property line; 30 TAC §324.11(2) and §324.4(2)(C)(i) and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.c., by failing to register with the commission prior to transporting and storing used oil; and 30 TAC §37.2011 and §324.22(b), (c), and (e) and TCEQ AO Docket Number 2007-0619-MLM-E, Ordering Provision Number 2.c.ii., by failing to establish and maintain financial assurance for soil remediation at the facility; PENALTY: $421,963, the Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by respondent EFFLUENT RECYCLING, INC. and determined that respondent EFFLUENT RECYCLING, INC. is unable to pay all or part of the administrative penalty. Therefore $420,763 of the administrative penalty is deferred contingent upon respondents' timely and satisfactory compliance with all the terms of the AO and shall be waived only upon full compliance with all the terms and conditions contained in the AO; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: GOLDEN GROUP, INC. d/b/a Snappy Mart; DOCKET NUMBER: 2012-2290-PST-E; TCEQ ID NUMBER: RN102702339; LOCATION: 4303 Highway 90, Crosby, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping

associated with the USTs by failing to conduct the annual piping tightness test; PENALTY: $4,819; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: HRS Site Control, LLC; DOCKET NUMBER: 2012-0882-WQ-E; TCEQ ID NUMBER: RN106301054; LOCATION: 280 feet east of Rim Drive and Interstate Highway 10, San Antonio, Bexar County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations, §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $1,250; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: J & J Soil Service, Inc.; DOCKET NUMBER: 2012-1423-MLM-E; TCEQ ID NUMBER: RN106451776; LOCATION: 409 Farm-to-Market Road 2423, Grapeland, Houston County; TYPE OF FACILITY: aglime, dry and liquid fertilizer, and pasture spraying facility with aboveground storage tanks (ASTs); RULES VIOLATED: 30 TAC §324.4(2)(B), by failing to prevent an unauthorized discharge of used oil; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c)(1), by failing to label or clearly mark containers used to store used oil; TWC, §26.121(a), by failing to prevent the discharge of industrial waste into or adjacent to water in the state; 30 TAC §281(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; and 30 TAC §334.127(a), by failing to register ASTs; PENALTY: $12,250; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: John Luera d/b/a JR's Quick Stop; DOCKET NUMBER: 2012-2068-PST-E; TCEQ ID NUMBER: RN102357787; LOCATION: 531 South Broadway, Premont, Jim Wells County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; PENALTY: $3,884; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: KJCJ ENTERPRISES INC DBA S & T Beer & Wine; DOCKET NUMBER: 2012-0176-PST-E; TCEQ ID NUMBER: RN102010972; LOCATION: 2220 Marsh Lane, Carrollton, Dallas County; TYPE OF FACILITY: underground storage tank (UST) and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the executive director, and each current employee receives in-house Stage II vapor training regarding the purpose and operation of the Stage II equipment; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; TWC, §26.3467(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs, and by failing to test the line leak detectors at least once per year for performance and operational reliability; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $12,464; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: LONE STAR DISTRIBUTORS, INC. and Valley Assets Holding, Inc., d/b/a Talkiris Drive In; DOCKET NUMBER: 2012-1757-PST-E; TCEQ ID NUMBER: RN102035193; LOCATION: North 2214 US Highway 83, Zapata, Zapata County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $2,609; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: Mo Pham d/b/a 24th Discount Store; DOCKET NUMBER: 2012-1327-PST-E; TCEQ ID NUMBER: RN101725026; LOCATION: 2390 Fritch Highway, Amarillo, Potter County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $2,384; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Nishi Enterprises Inc. d/b/a Kwik Chek; DOCKET NUMBER: 2012-0559-PST-E; TCEQ ID NUMBER: RN102400918; LOCATION: 1006 Aldine Bender Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,640; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE:

Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Rocky Wadlington d/b/a Farrar Water Supply Corporation; DOCKET NUMBER: 2012-1590-PWS-E; TCEQ ID NUMBER: RN101441095; LOCATION: intersection of Limestone County Road 846 and Limestone County Road 848, Farrar, Limestone County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.107(e), by failing to provide the results of sexennial volatile organic chemical contaminant sampling to the executive director; 30 TAC §290.106(e) and §290.113(e), by failing to provide the results of triennial Stage 1 disinfectant byproducts, metal, and mineral sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director for the 2010 reporting period; 30 TAC §290.113(e), by failing to provide the results of annual Stage 1 disinfectant byproducts sampling to the executive director for the 2010 reporting period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay public health service fees for TCEQ Financial Administration Account Number 91470007 for Fiscal Years 2011 - 2012; 30 TAC §290.107(e), by failing to provide the results of triennial synthetic organic chemical contaminant sampling to the executive director; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director for the 2011 reporting period; PENALTY: $1,015; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: SAMODA INC d/b/a Amigo Food Mart; DOCKET NUMBER: 2012-1287-PST-E; TCEQ ID NUMBER: RN102273877; LOCATION: 390 Aldine Bender Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.248(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(3)(G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, and free of defects that would impair the effectiveness of the system; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; PENALTY: $8,063; STAFF ATTORNEY: Cullen McMorrow, Litigation Division, MC 175, (512) 239-0607; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Sam's Truck Stop Business, Inc. d/b/a Plateau Truck Stop; DOCKET NUMBER: 2012-1535-PST-E; TCEQ ID NUMBER: RN101377620; LOCATION: Exit 159 I-10 West, Culberson County Appraisal District Account Number 7335 (AB 2434 BLK 81 PT SEC 12 PSL NTH INT 10 (Plateau)), Van Horn, Culberson County; TYPE OF FACILITY: aboveground petroleum storage tanks (ASTs) and truck stop with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.127(a)(1) and (d), by failing to provide an amended registration for any change or additional information regarding the ASTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.75(b), by failing to immediately clean up a spill of any petroleum product from an AST system; PENALTY: $7,500; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(14) COMPANY: Shafqat Irfan Malhi d/b/a Sirro Food Mart; DOCKET NUMBER: 2012-1931-PST-E; TCEQ ID NUMBER: RN102056983; LOCATION: 3463 West Highway 190, Belton, Bell County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $2,813; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: TEXAS SUPERTRACK, INC. d/b/a Supertrack Store; DOCKET NUMBER: 2012-1730-PST-E; TCEQ ID NUMBER: RN102849379; LOCATION: 2020 East Pioneer Parkway, Arlington, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2) and (2)(A)(i)(III), by failing to provide proper release detection for the pressurized piping associated with the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceed the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $16,783; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Zvels, Inc. d/b/a Shell Food Mart; DOCKET NUMBER: 2012-2051-PST-E; TCEQ ID NUMBER: RN100539832; LOCATION: 928 South Belt Line Road, Coppell, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.48(a)(1) by failing to provide proper corrosion protection for the UST system; PENALTY: $3,750; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201301530
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 16, 2013

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code

(TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 28, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 28, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Jack Calhoun; DOCKET NUMBER: 2012-1948-MSW-E; TCEQ ID NUMBER: RN106329873; LOCATION: 1003 West Whitney Street, Hamilton, Hamilton County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,312; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: MANKI LLC; DOCKET NUMBER: 2012-1001-MWD-E; TCEQ ID NUMBER: RN103759106; LOCATION: 11978 U.S. Highway 59 North, Seven Oaks, Polk County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (11)(A) and §319.5(b), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014960001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and Monitoring and Reporting Requirements Number 1, by failing to monitor effluent at the monitoring frequency specified in the permit; 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0014960001, Monitoring and Reporting Requirements Number 3.b., by failing to maintain records and make them readily available for review upon request by TCEQ representatives; 30 TAC §305.125(1) and TPDES Permit Number WQ0014960001, Monitoring and Reporting Requirements Number 7.c., by failing to report in writing to the regional office and the enforcement division any effluent violation which deviates from the permitted limitation by more than 40% within five working days of becoming aware of the non-compliance; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0014960001 Operational Requirements Number 1 and Other Requirements Number 6, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5), §217.33, and §217.59, and TPDES Permit Number WQ0014960001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5), §217.330(a), and TPDES Permit Number WQ0014960001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly, operated and maintained; 30 TAC §305.125(1) and (5), §217.325(c), and TPDES Permit Number WQ0014960001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment and disposal are properly operated and maintained; 30 TAC §30.350(d) and §305.125(1) and TPDES Permit Number WQ0014960001, Other Requirements Number 1, by failing to employ or contract one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; 30 TAC §305.125(1) and (20)(C), and TPDES Permit Number WQ0014960001, Monitoring and Reporting Requirements Number 1, by failing to report true and accurate data to the TCEQ; 30 TAC §305.125(1) and TPDES Permit Number WQ0014960001, Monitoring and Reporting Requirements Number 7.c., by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the regional office and the enforcement division within five working days of becoming aware of the non-compliance; 30 TAC §305.125(1) and (11)(A) and §319.5(b), and TPDES Permit Number WQ0014960001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and Monitoring and Reporting Requirements Number 1, by failing to monitor effluent at the monitoring frequency specified in the permit; TWC, §26.121(a)(1) and 30 TAC §305.125(1) and TPDES Permit Number WQ0014960001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17), §319.7(d), and TPDES Permit Number WQ0014960001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $113,305; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Melva Ramirez; DOCKET NUMBER: 2012-1881-PST-E; TCEQ ID NUMBER: RN101730497; LOCATION: State Highway 44 and Simmons Avenue, Agua Dulce, Nueces County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and filing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $16,250; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201301531
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 16, 2013

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code

(TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 28, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 28, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Alberto Suarez d/b/a Berts Quik Stop; DOCKET NUMBER: 2012-2192-PST-E; TCEQ ID NUMBER: RN102433745; LOCATION: 404 South Broadway, Premont, Jim Wells County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: JNK 1ST FOOD, INC. d/b/a 1st Food & Bakery; DOCKET NUMBER: 2012-1732-PST-E; TCEQ ID NUMBER: RN102283959; LOCATION: 210 US Highway 259 North, Mount Enterprise, Rusk County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance in the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $19,043; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: New Caney Enterprise, Inc. d/b/a Bills 3Gs Food Mart; DOCKET NUMBER: 2012-2337-PST-E; TCEQ ID NUMBER: RN101879716; LOCATION: 23550 Farm-to-Market Road 1485, New Caney, Montgomery County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $9,000; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: RAHIYA HILLCREST, INC. d/b/a Single Tree 3; DOCKET NUMBER: 2012-1307-PST-E; TCEQ ID NUMBER: RN102434651; LOCATION: 2154 US Highway 59 South, Cleveland, Liberty County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the piping associated with the UST system; 30 TAC §334.10(b)(1)(B), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $9,751; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: SRK GROUPS INC d/b/a Cool Stop 1; DOCKET NUMBER: 2011-2313-PST-E; TCEQ ID NUMBER: RN102382058; LOCATION: 5480 College Street, Beaumont, Jefferson County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(1) and (2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i), by failing to equip each separate pressurized line with an automatic line leak detector; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation

of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.45(d)(1)(E)(vi), by failing to equip tank manways and dispenser sumps of a secondarily contained UST system with liquid sensing probes; THSC, §382.085(b) and 30 TAC §115.246(1), (3), and (4), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; THSC, §382.085(b) and 30 TAC §115.242(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $17,908; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201301529
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 16, 2013

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Notice of Water Quality Applications

The following notices were issued on April 5, 2013 through April 12, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

VAITHI DEVELOPMENT INC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012527001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is at located 14718 Kuykendahl Road between Farm-to-Market Road 1960 and Interstate 45 in Harris County, Texas 77090.

CITY OF BRYAN has applied for a renewal of TPDES Permit No. WQ0010426002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 2028 Quality Park Lane, Bryan, Brazos County, Texas 77803.

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0010436001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 1714 Sandydale Lane, Houston, in the Western Homes Subdivision in Harris County, Texas 77039.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 15 has applied for a renewal of TPDES Permit No. WQ0011395001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 16705 Gleneagles Drive, approximately 5,000 feet north of Needham Road in Montgomery County, Texas 77301.

YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE GREATER HOUSTON AREA has applied for a renewal of TPDES Permit No. WQ0011644001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1,000 feet north of Farm-to-Market Road 356, 4.5 miles east of State Highway 19 and 5 miles southeast of the intersection of State Highway 19 and Farm-to-Market Road 230 in Trinity County, Texas 75862.

LAZY RIVER IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. WQ0011820001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 200 Glen Hollow Drive, approximately 7,500 feet southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 1488, south of the City of Conroe in Montgomery County, Texas 77385.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368 has applied for a renewal of TPDES Permit No. WQ0012044001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 19744 1/2 Logan Briar Drive, approximately one mile east of Farm-to-Market Road 249 and approximately 1,200 feet south of Boudreaux Road, Tomball in Harris County, Texas 77375.

MACBAIN PROPERTIES (TEXAS) INC has applied for a new permit, Proposed TCEQ Permit No. WQ0015047001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via surface irrigation of 8.3 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 817 Diamond H Ranch Road, Catarina in Dimmit County, Texas 78836.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301548
Bridget C. Bohac
Chief Clerk
Texas Commission of Environmental Quality
Filed: April 17, 2013

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 12, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Caddell Stephenson; SOAH Docket No. 582-12-6882; TCEQ Docket No. 2012-0327-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Caddell Stephenson on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin,

Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201301551
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 17, 2013

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2013 for committees

Paul W. Landerman, El Paso Stonewall Young Democrats, 9009 El Dorado, El Paso, Texas 79925

TRD-201301476
David Reisman
Executive Director
Texas Ethics Commission
Filed: April 11, 2013

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Texas Facilities Commission

Request for Proposals #303-4-20377

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety-Texas Department of Emergency Management (DPS-TDEM), announces the issuance of Request for Proposals (RFP) #303-4-20377. TFC seeks a five (5) or ten (10) year lease of approximately 101,066 square feet of office and warehouse space in San Antonio, Bexar County, Texas.

The deadline for questions is May 6, 2013, and the deadline for proposals is May 23, 2013, at 3:00 p.m. The award date is July 1, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=105362*.

TRD-201301544
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 16, 2013

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Anesthesiologist Assistants

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 15, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Anesthesiologist Assistants.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Anesthesiologist Assistants are proposed to be effective June 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8221, which addresses the reimbursement methodology for Certified Registered Nurse Anesthetists.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after May 1, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at allen.bonner@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to allen.bonner@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas, 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201301538
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 16, 2013

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Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for renewal to the Home and Community-based Services (HCS) waiver program, under the authority of §1915(c) of the Social Security Act. The Home and Community-based Service waiver program is currently approved for a five-year period beginning September 1, 2008, and ending August 31, 2013. The proposed effective date for the renewal is September 1, 2013. This Public Notice supplements the notice published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1901).

The Home and Community-based Service program provides service and supports to persons with intellectual disabilities who live in their own home or family home or in a community setting such as a small group home. To be eligible for the program, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

Changes in the waiver program will include an addition of the outline for the new oversight process, update to the definition for supported employment to ensure consistency across all 1915(c) Medicaid waiver programs, the consumer directed services agencies contract monitoring will be revised to reflect the monitoring is conducted at least every three years, a reserve capacity group will be added for individuals with a level of care I or level of care VIII who reside in a nursing facility, and language related to the fair hearing process will be added. Also the interest list process will be amended for individuals denied waiver enrollment based on diagnosis or other functional eligibility requirements. Eligibility criteria outlined in the waiver will be updated to include the mandatory participation requirements.

The Health and Human Services Commission is requesting that the waiver renewal be approved for the period beginning September 1, 2013, through August 31, 2018. This renewal maintains cost neutrality for waiver years 2013 through 2018.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1315, fax (512) 491-1957, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201301558
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 17, 2013

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Heart of Texas Workforce Development Board

Request for Proposal - Management and Operations of the Child Care Services System

Heart of Texas Workforce Development Board, Inc., dba Workforce Solutions for the Heart of Texas, is the administrative entity for programs funded by the Texas Workforce Commission and Department of Labor and serves McLennan, Falls, Bosque, Freestone, Limestone, and Hill Counties.

The initial contract period will begin on October 1, 2013. Eligible service providers must have extensive knowledge and experience including a successful track record in workforce development programs and state and federal laws and statutes.

The Request for Proposal (RFP) may be obtained by contacting Margie Cintron at (254) 855-6543 or e-mailing: jcintron@grandecom.net. The RFP is also available on the Workforce Solutions for the Heart of Texas website. A Bidders Conference will be held on Monday, April 15, at 10:30 a.m. at the Workforce Center located at 1416 South New Road, Waco, Texas. Attendance is not mandatory, but strongly recommended.

Proposals are due no later than 3:00 p.m. (CST) Monday, May 13, 2013.

Workforce Solutions for the Heart of Texas

801 Washington Avenue, Suite 700

Waco, Texas 76701

(254) 296-5393

http://www.hotworkforce.com

The Heart of Texas Workforce Board is an equal opportunity employer/program, and auxiliary aids and services are available upon request to include individuals with disabilities. TT/TDD via RELAY Texas service at 711 or (TDD) 1-800-735-2989/1-800-735-2988 (voice).

TRD-201301474
Anthony Billings
Executive Director
Heart of Texas Workforce Development Board
Filed: April 10, 2013

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program 2013 HOME Single Family Development Activity Notice of Funding Availability

Source of HOME Funds.

The HOME Investment Partnerships Program (HOME Program) is funded by the U.S. Department of Housing and Urban Development (HUD). Authorized under the Cranston-Gonzalez National Affordable Housing Act, the purpose of the program is to expand the supply of decent, safe, affordable housing and strengthen public-private housing partnerships between Units of General Local Governments, Public Housing Authorities, nonprofits, and for profit entities.

Notice of Funding Availability.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $1,291,353 in funding from the HOME Program for Community Housing Development Organizations (CHDOs) to develop new and rehabilitate existing single family housing for purchase by low-income Texans.

The $1,291,353 of funding will be available solely through the Reservation System. Approval for participation in the Reservation System is not a guarantee of funding availability and the Department reserves the right to withdraw funds from the Reservation System.

Application Deadline and Availability.

All applications submitted under this NOFA must be received on or before **5:00 p.m. on December 13, 2013.** The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline.

For more information, including application and Threshold Criteria, please read the full NOFA at the Department's website: www.tdhca.state.tx.us.

TRD-201301552

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 17, 2013

♦ ♦ ♦

HOME Investment Partnerships Program 2013 HOME Single Family Programs Contract for Deed Conversion Notice of Funding Availability (NOFA)

Source of HOME Funds.

The HOME Investment Partnerships Program (HOME Program) is funded by the U.S. Department of Housing and Urban Development (HUD). Authorized under the Cranston-Gonzalez National Affordable Housing Act, the purpose of the program is to expand the supply of decent, safe, affordable housing and strengthen public-private housing partnerships between Units of General Local Governments, Public Housing Authorities, nonprofits, and for profit entities.

Notice of Funding Availability.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $1,000,000 in funding awards from the HOME Program for Contract for Deed Conversation (CFDC) Set-Aside. CFDC provides funds to convert contracts for deed in colonias to warranty deeds.

Application Deadline and Availability.

All applications submitted under this NOFA must be received on or before **5:00 p.m. December 13, 2013.** The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published on the Department's web site until the deadline.

For more information, including application and Threshold Criteria, please read the full NOFA at the Department's website: www.tdhca.state.tx.us.

TRD-201301553
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 17, 2013

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council solicits qualified organizations to operate the Gulf Coast Workforce Board's regional system, known as Workforce Solutions. A proposal package will be available for download at http://www.h-gac.com or www.wrksolutions.com beginning at 12:00 noon Central Standard Time on Wednesday, April 17, 2013. Hard copies of the proposal package will also be available at that time. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or carol.kimmick@h-gac.com or visit the web site to obtain a proposal package. A bidder's conference is scheduled for Wednesday, May 1, 2013 at 1:30 p.m. at H-GAC offices, 3555 Timmons Lane, 2nd Floor, Conference Room A, Houston, Texas 77027. Proposals will be due at H-GAC by 12:00 noon Central Daylight Time on Tuesday, May 21, 2013. Mailed proposals must be postmarked no later than Friday, May 17, 2013. H-GAC will not accept late proposals; we will make no exceptions.

TRD-201301517
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: April 15, 2013

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1492 "Millionaires Club"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1492 is "MILLIONAIRES CLUB". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1492 shall be $50.00 per Ticket.

1.2 Definitions in Instant Game No. 1492.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, COIN SYMBOL, CROWN SYMBOL, TEN TIMES SYMBOL, ONE DOT SYMBOL, TWO DOTS SYMBOL, THREE DOTS SYMBOL, FOUR DOTS SYMBOL, FIVE DOTS SYMBOL, SIX DOTS SYMBOL, $50.00, $70.00, $100, $200, $500, $1,000, $2,000, $10,000 and $7,500,000.

D. Play Symbols Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1492 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV

48	FRET
49	FRNI
50	FFTY
COIN SYMBOL	WIN
CROWN SYMBOL	DBL
TEN TIMES SYMBOL	WIN10X
ONE DOT SYMBOL	ONE
TWO DOTS SYMBOL	TWO
THREE DOTS SYMBOL	THR
FOUR DOTS SYMBOL	FOR
FIVE DOTS SYMBOL	FIV
SIX DOTS SYMBOL	SIX
$50.00	FIFTY
$70.00	SVTY
$100	ONE HUND
$200	TWO HUN
$500	FIV HUN
$1,000	ONE THOU
$2,000	TWO THOU
$10,000	10 THOU
$7,500,000	7.5 MILL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Mid-Tier Prize - A prize of $50.00, $70.00, $100, $150, $200 or $500.

G. High-Tier Prize - A prize of $1,000, $2,000, $10,000 or $7,500,000.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1492), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 1492-0000001-001.

J. Pack - A Pack of "MILLIONAIRES CLUB" Instant Game Tickets contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a Pack.

K. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MILLIONAIRES CLUB" Instant Game No. 1492 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MILLIONAIRES CLUB" Instant Game is determined once the latex on the Ticket is scratched off to expose 67 (sixty-seven) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "Coin" Play Symbol, the player wins the PRIZE for that symbol. If a player reveals a "Crown" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "Ten Times" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. BONUS: If the total of the two dice is 7, the player wins $50. If the total of the two dice is 11, the player wins $100. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 67 (sixty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 67 (sixty-seven) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 67 (sixty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 67 (sixty-seven) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirty-one (31) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $7,500,000 and $10,000 will each appear at least once, except on Tickets winning thirty-one (31) times.

E. MAIN PLAY AREA: This play area consists of thirty (30) YOUR NUMBERS Play Symbols, thirty (30) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

F. MAIN PLAY AREA: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

G. MAIN PLAY AREA: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

H. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than 5 times, except as required by the prize structure to create multiple wins.

I. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBER Play Symbol will never match a YOUR NUMBER Play Symbol.

J. MAIN PLAY AREA: The five (5) WINNING NUMBERS Play Symbols will always be different from each other (no duplicates).

K. MAIN PLAY AREA: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

L. MAIN PLAY AREA: The COIN (instant win) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

M. MAIN PLAY AREA: The COIN (instant win) Play Symbol will never appear on Non-Winning Tickets.

N. MAIN PLAY AREA: The COIN (instant win) Play Symbol will never appear more than three (3) times.

O. MAIN PLAY AREA: The CROWN (double) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

P. MAIN PLAY AREA: The CROWN (double) Play Symbol will never appear on Non-Winning Tickets.

Q. MAIN PLAY AREA: The CROWN (double) Play Symbol will win double the prize amount shown as per the prize structure.

R. MAIN PLAY AREA: The TEN TIMES (win 10X) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

S. MAIN PLAY AREA: The TEN TIMES (win 10X) Play Symbol will never appear on Non-Winning Tickets.

T. MAIN PLAY AREA: The TEN TIMES (win 10X) Play Symbol will win ten times the prize amount shown as per the prize structure.

U. BONUS PLAY AREA: Players can win one (1) time in this play area.

V. BONUS PLAY AREA: This play area in this game will consist of two (2) dice symbols and a "+" sign.

W. BONUS PLAY AREA: The BONUS PLAY AREA can be used for multiple wins.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLIONAIRES CLUB" Instant Game prize of $50.00, $70.00, $100, $150, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $70.00, $100, $150, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLIONAIRES CLUB" Instant Game prize of $1,000, $2,000 or $10,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "MILLIONAIRES CLUB" top level prize of $7,500,000, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "MILLIONAIRES CLUB" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MILLIONAIRES CLUB" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MILLIONAIRES CLUB" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,600,000 Tickets in the Instant Game No. 1492. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1492 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$50	600,000	6.00
$70	510,000	7.06
$100	255,000	14.12
$150	27,000	133.33
$200	18,000	200.00
$500	15,030	239.52
$1,000	6,570	547.95
$2,000	1,980	1,818.18
$10,000	100	36,000.00
$7,500,000	3	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 2.51. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1492 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1492, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301505
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 15, 2013

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Instant Game Number 1513 "Money Match"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1513 is "MONEY MATCH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1513 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1513.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $1,000 and $20,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1513 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1513), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1513-0000001-001.

K. Pack - A Pack of "MONEY MATCH" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY MATCH" Instant Game No. 1513 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MONEY MATCH" Instant Game is determined once the latex on the Ticket is scratched off to expose 18 (eighteen) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that NUMBER. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 18 (eighteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 18 (eighteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 18 (eighteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 18 (eighteen) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eight (8) times.

D. On winning and Non-Winning Tickets, the top cash prize of $20,000 and the $1,000 prize will each appear at least once, except on Tickets winning eight (8) times.

E. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

F. On all Tickets, a prize amount will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

G. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

H. On Non-Winning Tickets, a WINNING NUMBER Play Symbol will never match a YOUR NUMBER Play Symbol.

I. All WINNING NUMBERS Play Symbols on a Ticket will be different from each other.

J. YOUR NUMBERS Play Symbols will never match the corresponding Prize Symbol (i.e., 2 and $2.)

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MATCH" Instant Game prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MATCH" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MATCH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY MATCH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY MATCH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of

the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1513. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1513 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	624,000	9.62
$5	304,000	19.74
$6	144,000	41.67
$10	192,000	31.25
$15	16,000	375.00
$16	48,000	125.00
$20	32,000	187.50
$30	4,750	1,263.16
$50	3,248	1,847.29
$100	1,196	5,016.72
$1,000	16	375,000.00
$20,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1513 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1513, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301540
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 16, 2013

♦ ♦ ♦

Instant Game Number 1516 "Livin' Lucky"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1516 is "LIVIN' LUCKY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1516 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1516.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOUBLE DOLLAR SIGN SYMBOL, GOLD BAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 and $50,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1516 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$$ SYMBOL	DOUBLE
GOLD BAR SYMBOL	TRIPLE
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1516), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1516-0000001-001.

K. Pack - A Pack of "LIVIN' LUCKY" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LIVIN' LUCKY" Instant Game No. 1516 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "LIVIN' LUCKY" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a DOUBLE DOLLAR "$$" Play Symbol, the player wins DOUBLE the prize for that Play Symbol. If a player reveals a "GOLD BAR" Play Symbol, the player wins TRIPLE the prize for that Play Symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed

in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

D. Non-winning YOUR NUMBERS Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than three (3) times.

F. The "$$" and "GOLD BAR" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "$$" and "GOLD BAR" Play Symbols will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "LIVIN' LUCKY" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LIVIN' LUCKY" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LIVIN' LUCKY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LIVIN' LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LIVIN' LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1516. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1516 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	944,000	7.50
$10	660,800	10.71
$15	188,800	37.50
$20	188,800	37.50
$50	75,933	93.24
$100	14,750	480.00
$500	708	10,000.00
$2,000	80	88,500.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1516 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1516, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301539
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 16, 2013

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North Central Texas Council of Governments

Request for Proposals for the 2014 Regional Onboard Transit Survey

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consultant firms to conduct the North Central Texas Regional Transit Travel Survey in 2014. This survey would cover bus, light rail, and commuter rail lines operated by Dallas Area Rapid Transit (DART), Denton County Transportation Authority (DCTA), and the Fort Worth Transportation Authority (The T). The purpose of the survey is to provide updated information regarding the transit users' travel patterns and trip-making behavior to assist the transit agencies in their planning process and for use in NCTCOG's Dallas-Fort Worth Regional Travel Model (DFX).

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, May 31, 2013, to Kathy Yu, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, April 26, 2013. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d - 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201301515
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 15, 2013

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Request for Proposals for the Regional Intelligent Transportation System Architecture Update

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consultant firm(s) to prepare an update to the Regional Intelligent Transportation System (ITS) Architecture for the North Central Texas Region including an update to the project-level ITS architecture compliance process and the development of an ITS Strategic Deployment Plan that will identify and prioritize ITS projects for future implementation. The North Texas Regional ITS Architecture is the Regional ITS Architecture for the North Central Texas Region. The Regional ITS Architecture establishes a blueprint for transportation integration and needs to be updated periodically to reflect technological advances in ITS. In addition, the Regional ITS Architecture needs to maintain consistency with the National ITS Architecture. The purpose of this project is to update the Architecture and to develop a Maintenance Plan for the Architecture, as well as a Strategic Deployment Plan for future ITS infrastructure deployment and software integration projects.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, May 31, 2013, to Marian Thompson, P.E., Transportation System Operations Supervisor, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, April 26, 2013. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d - 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201301514
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 15, 2013

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Land Acquisition - Yoakum, Cochran and Terry Counties

In a meeting on May 23, 2013 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 4,500 acres of land in Yoakum, Cochran and Terry counties for addition to Yoakum Dunes Preserve. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by e-mail at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201301493
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 12, 2013

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Texas Department of Public Safety

Request for Applications from Local Emergency Planning Committees for Hazardous Materials Emergency Preparedness Grants

INTRODUCTION: The Texas Department of Public Safety - Texas Division of Emergency Management (TDEM), acting on behalf of the State Emergency Response Commission (SERC), is requesting applications from Local Emergency Planning Committees (LEPCs) for Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to cities/counties/regions represented by LEPCs or authorities to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to the use, storage and/or transit of hazardous chemicals. The U.S. Department of Transportation has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC or authority in various ways depending upon needs.

ELIGIBLE APPLICANTS: Each application must be developed by an LEPC or authority in cooperation with county and/or city governments or regional authority. LEPC membership and regional authority standing must be recognized by the SERC. The LEPC application must be approved by an LEPC vote. Each LEPC or authority shall arrange for a city or county to serve as its fiscal agent for the management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide appropriate certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or an authorization to commit funds from the city.

LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U.S. Department of Transportation (U.S. DOT). This is the twenty-second of a series of annual grant awards, which will be issued through Federal Fiscal Year 2014. Grants will be awarded based upon project, population, hazardous materials risk, need, and cost-effectiveness as determined by the SERC. TDEM will fund a maximum of eighty percent of the total project amount approved by the SERC and the remaining costs must be borne by the grantee. Approved in-kind contributions may be used to satisfy this twenty percent minimum requirement. In addition to the grant, LEPCs or authorities must maintain the same level of spending for planning as an average of the past two years.

EXAMPLES OF PROPOSALS:

(a) Development, improvement, and implementation of emergency plans required under the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as exercises which test the emergency plan. Improvement of emergency plans may include hazard analysis or risk assessment as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

(b) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State, Territory or Native American Land, and development and maintenance of a system to keep such information current.

(c) An assessment of the need for regional hazardous materials emergency response teams or to assess local response capabilities.

(d) Conducting emergency response drills and exercises associated with transportation-related emergency response plans.

(e) Temporary technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

(f) Any other planning project related to the transportation of hazardous materials approved by TDEM, using U.S. DOT approved projects as a reference base.

CONTRACT PERIOD: Grant contracts begin as early as October 1, 2013, and end no later than September 30, 2014.

FINAL SELECTION: TDEM will review the applications and the SERC Subcommittee on Planning will make the final selections. The State is under no obligation to award grants to any or all applicants.

APPLICATION FORMS AND DEADLINE: You can obtain a "Request for Application" package by downloading the documents from the TDEM website at http://www.dps.texas.gov/dem/GrantsResources/index.htm or by requesting a copy from the HazMat Preparedness Officer at donald.loucks@dps.texas.gov or by calling him at (512) 424-5985. The completed (original) "Request for Application" package may be sent via email to the Program Officer, but the executed hard copy must be sent via certified/registered mail, or other private mail delivery service requiring a signature, to the Texas Division of Emergency Management, Preparedness Section, Technological Hazards Unit, P.O. Box 4087, Austin, Texas 78773-0223. The application(s) must be received by 5:00 p.m. on July 1, 2013.

TRD-201301527
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: April 16, 2013

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 9, 2013, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Google Fiber Texas, LLC for State-Issued Certificate of Franchise Authority, Project Number 41364.

The requested SICFA service area consists of the city limits of Austin, Texas, a home-rule municipal corporation situated in Hays, Travis, and Williamson Counties.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All inquiries should reference Project Number 41364.

TRD-201301480
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2013

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Notice of Application for a Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 10, 2013, for a certificate of operating authority (COA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Universal Local Exchange Carrier of Texas, LLC for a Certificate of Operating Authority, Docket Number 41371.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant proposes to provide service within the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than May 3, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41371.

TRD-201301481
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2013

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 10, 2013, Telscape Communications, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (COA) Number 60558. Applicant seeks approval to reflect a change in corporate structure whereby Applicant will become wholly-owned by TSC Acquisition Corp.

The Application: Application of Telscape Communications, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 41372.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than May 3, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41372.

TRD-201301482
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2013

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 15, 2013, to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in El Paso County, Texas.

Docket Style and Number: Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for the Proposed Montana Power Station Intersect with Caliente to Coyote 115-kV Transmission Line in El Paso County. Docket Number 41359.

The Application: The proposed application of El Paso Electric Company (EPE) is designated as the Montana Power Station Intersect with Caliente to Coyote 115-kV transmission line project. EPE will be constructing new 115-kV transmission lines to interconnect the new Montana Power Station to the EPE transmission system. EPE plans to file three CCN applications to construct the interconnection facilities and network upgrades necessary to comply with the terms of the interconnection agreement. This filing is associated with intersecting the existing Caliente to Coyote 115-kV line creating two circuits. The total estimated cost for the project ranges from approximately $4.4 to $4.5 million depending on the route chosen.

The proposed project is presented with three alternate routes and is estimated to be approximately 1.3 to 1.6 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is May 30, 2013. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41359.

TRD-201301555
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 17, 2013

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the application filed with Public Utility Commission of Texas (commission) on April 15, 2013, to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in El Paso County, Texas.

Docket Style and Number: Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for the Proposed Montana Power Station to Caliente Substation 115-kV Transmission Line in El Paso County. Docket Number 41360.

The Application: The application of El Paso Electric Company (EPE) is for a proposed line designated as the Montana Power Station to Caliente Substation 115-kV transmission line project. EPE will be constructing new 115-kV transmission lines to interconnect the Montana Power Station to the EPE transmission system. The total estimated cost for the project ranges from approximately $4.6 to $8.4 million depending on the route chosen.

The proposed project is presented with three alternate routes and is estimated to be approximately 2.4 to 4.8 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is May 30, 2013. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41360.

TRD-201301557
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 17, 2013

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On April 15, 2013, 360networks (USA) inc. (applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60453. Applicant seeks to relinquish the certificate. Applicant stated that Zayo Group, LLC (Zayo) is the successor in interest to applicant through a series of *pro forma* mergers with Zayo as the surviving entity. As a result, Zayo provides services to the former customers of applicant.

The Application: Application of 360networks (USA) inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 41386.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than May 3, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41386.

TRD-201301541
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2013

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On April 15, 2013, AboveNet Communications, Inc. (applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60220. Applicant seeks to relinquish the certificate. Applicant stated that Zayo Group, LLC (Zayo) is the successor in interest to applicant through a series of *pro forma* mergers with Zayo as the surviving entity. As a result, Zayo provides services to the former customers of applicant.

The Application: Application of AboveNet Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 41387.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than May 3, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41387.

TRD-201301542
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2013

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 10, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Peoples Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 41374.

The Application: On April 10, 2013, Peoples Telephone Cooperative, Inc. (Peoples Telephone or Applicant) filed an application for revisions to its Member Services Tariff to increase the residential Local Exchange Access Line rate in the Cypress Springs Exchange. Peoples Telephone also proposes to provide Intra-Company Toll-Free Local Calling to all local exchange customers at no additional charge. Customers will be able to make a local call to any exchange in the Cooperative's service area using ten-digit dialing. Peoples Telephone proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by the Applicant is $101,358 in gross annual intrastate revenues. The Applicant has 10,486 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41374.

TRD-201301483
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2013

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Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9049

FINAL APPROVAL OF RULES FOR JUSTICE COURT CASES

ORDERED that:

1. In accordance with the Act of June 29, 2011, 82nd Leg., 1st C.S., ch. 3, §§5.02, 5.07 (HB 79) and the Act of April 2, 2013, 83rd Leg., R.S. (HB 1263), amending section 27.060 of the Texas Government Code and abolishing the small claims court as of August 31, 2013, and pursuant to section 22.004 of the Texas Government Code, Rules 500-510 of the Texas Rules of Civil Procedure are adopted as follows, and Rules 523-591 and 737-755 of the Texas Rules of Civil Procedure and section 92.0563(d) of the Texas Property Code are repealed, effective August 31, 2013.

2. By Order dated February 12, 2013, in Misc. Docket No. 13-9023, the Court promulgated Rules 500-510 of the Texas Rules of Civil Procedure and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of the rules.

3. Rules of Civil Procedure 500-510 govern cases filed on or after August 31, 2013, and cases pending on August 31, 2013, except to the extent that in the opinion of the court their application in a case pending on August 31, 2013, would not be feasible or would work injustice, in which event the formerly applicable procedure applies. An action taken before August 31, 2013, in a case pending on August 31, 2013, that was done pursuant to any previously applicable procedure must be treated as valid. Where citation or other process was issued or served prior to August 31, 2013, in compliance with any previously applicable procedure, the party served has the time provided for under the previously applicable procedure to answer or otherwise respond.

4. This Order also promulgates a justice court civil case information sheet, as required by new Rule 502 of the Texas Rules of Civil Procedure. The case information sheet takes effect August 31, 2013.

5. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register.*

Dated: April 15th, 2013.

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Wallace B. Jefferson, Chief Justice

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Nathan L. Hecht, Justice

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Paul W. Green, Justice

_____

Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

_____

Jeffrey S. Boyd, Justice

_____

John P. Devine, Justice

TEXAS RULES OF CIVIL PROCEDURE

PART V. RULES OF PRACTICE IN JUSTICE COURTS

RULE 500. GENERAL RULES

RULE 500.1. CONSTRUCTION OF RULES

Unless otherwise expressly provided, in Part V of these Rules of Civil Procedure:

(a) the past, present, and future tense each includes the other;

(b) the term "it" includes a person of either gender or an entity; and

(c) the singular and plural each includes the other.

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

(a) "Answer" is the written response that a party who is sued must file with the court after being served with a citation.

(b) "Citation" is the court-issued document required to be served upon a party to inform the party that it has been sued.

(c) "Claim" is the legal theory and alleged facts that, if proven, entitle a party to relief against another party in court.

(d) "Clerk" is a person designated by the judge as a justice court clerk, or the judge if there is no clerk available.

(e) "Counterclaim" is a claim brought by a party who has been sued against the party who filed the lawsuit, for example, a defendant suing a plaintiff.

(f) "County court" is the county court, statutory county court, or district court in a particular county with jurisdiction over appeals of civil cases from justice court.

(g) "Cross-claim" is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, the defendants can seek relief against each other by means of a cross-claim.

(h) "Default judgment" is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff's claims in the lawsuit.

(i) "Defendant" is a party who is sued, including a plaintiff against whom a counterclaim is filed.

(j) "Defense" is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(k) "Discovery" is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(l) "Dismissed without prejudice" means a case has been dismissed but has not been finally decided and may be refiled.

(m) "Dismissed with prejudice" means a case has been dismissed and finally decided and may not be refiled.

(n) "Judge" is a justice of the peace.

(o) "Judgment" is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(p) "Jurisdiction" is the authority of the court to hear and decide a case.

(q) "Motion" is a request that the court make a specified ruling or order.

(r) "Notice" is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(s) "Party" is a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.

(t) "Petition" is a formal written application stating a party's claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.

(u) "Plaintiff" is a party who sues, including a defendant who files a counterclaim.

(v) "Pleading" is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.

(w) "Relief" is the remedy a party requests from the court, such as the recovery of money or the return of property.

(x) "Serve" and "service" are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.

(y) "Sworn" means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.

(z) "Third party claim" is a claim brought by a party being sued against someone who is not yet a party to the case.

RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES

(a) *Small Claims Case.* A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

(b) *Debt Claim Case.* A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.

(c) *Repair and Remedy Case.* A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

(d) *Eviction Case.* An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $10,000, excluding statutory interest and court costs but including attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

(e) *Application of Other Rules.* The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

(f) *Examination of Rules.* The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

RULE 500.4. REPRESENTATION IN JUSTICE COURT CASES

(a) *Representation of an Individual.* An individual may:

(1) represent himself or herself;

(2) be represented by an authorized agent in an eviction case; or

(3) be represented by an attorney.

(b) *Representation of a Corporation or Other Entity.* A corporation or other entity may:

(1) be represented by an employee, owner, officer, or partner of the entity who is not an attorney;

(2) be represented by a property manager or other authorized agent in an eviction case; or

(3) be represented by an attorney.

(c) *Assisted Representation.* The court may, for good cause, allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated.

RULE 500.5. COMPUTATION OF TIME; TIMELY FILING

(a) *Computation of Time.* To compute a time period in these rules:

(1) exclude the day of the event that triggers the period;

(2) count every day, including Saturdays, Sundays, and legal holidays; and

(3) include the last day of the period, but

(A) if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday; and

(B) if the last day for filing falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day.

(b) *Timely Filing by Mail.* Any document required to be filed by a given date is considered timely filed if deposited in the U.S. mail on or before that date, and received within 10 days of the due date. A legible postmark affixed by the United States Postal Service is evidence of the date of mailing.

(c) *Extensions.* The judge may, for good cause shown, extend any time period under these rules except those relating to new trial and appeal.

RULE 500.6. JUDGE TO DEVELOP THE CASE

In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness

when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

RULE 500.7. EXCLUSION OF WITNESSES

The court must, on a party's request, or may, on its own initiative, order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:

(a) a party who is a natural person or the spouse of such natural person;

(b) an officer or employee designated as a representative of a party who is not a natural person; or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's case.

RULE 500.8. SUBPOENAS

(a) *Use.* A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in a county that is more than 150 miles from where the person resides or is served.

(b) *Who Can Issue.* A subpoena may be issued by the clerk of the justice court or an attorney authorized to practice in the State of Texas, as an officer of the court.

(c) *Form.* Every subpoena must be issued in the name of the "State of Texas" and must:

(1) state the style of the suit and its case number;

(2) state the court in which the suit is pending;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the date, time, place, and nature of the action required by the person to whom the subpoena is directed;

(6) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;

(7) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and

(8) be signed by the person issuing the subpoena.

(d) *Service: Where, By Whom, How.* A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or by any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(e) *Compliance Required.* A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(f) *Objection.* A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

(g) *Enforcement.* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or of a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof of service and proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

RULE 500.9. DISCOVERY

(a) *Pretrial Discovery.* Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any requests for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. Unless a hearing is requested, the judge may rule on the motion without a hearing. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses.

(b) *Post-judgment Discovery.* Post-judgment discovery is not required to be filed with the court. The party requesting discovery must give the responding party at least 30 days to respond to a post-judgment discovery request. The responding party may file a written objection with the court within 30 days of receiving the request. If an objection is filed, the judge must hold a hearing to determine if the request is valid. If the objection is denied, the judge must order the party to respond to the request. If the objection is upheld, the judge may reform the request or dismiss it entirely.

RULE 501. CITATION AND SERVICE

RULE 501.1. CITATION

(a) *Issuance.* When a petition is filed with a justice court to initiate a suit, the clerk must promptly issue a citation and deliver the citation as directed by the plaintiff. The plaintiff is responsible for obtaining service on the defendant of the citation and a copy of the petition with any documents filed with the petition. Upon request, separate or additional citations must be issued by the clerk. The clerk must retain a copy of the citation in the court's file.

(b) *Form.* The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) show the date of filing of the petition;

(5) show the date of issuance of the citation;

(6) show the file number and names of parties;

(7) be directed to the defendant;

(8) show the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff; and

(9) notify defendant that if the defendant fails to file an answer, judgment by default may be rendered for the relief demanded in the petition.

(c) *Notice.* The citation must include the following notice to the defendant in boldface type: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(d) *Copies.* The plaintiff must provide enough copies to be served on each defendant. If the plaintiff fails to do so, the clerk may make copies and charge the plaintiff the allowable copying cost.

RULE 501.2. SERVICE OF CITATION

(a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, only a sheriff or constable may serve a citation in an eviction case, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. Other citations may be served by:

(1) a sheriff or constable;

(2) a process server certified under order of the Supreme Court;

(3) the clerk of the court, if the citation is served by registered or certified mail; or

(4) a person authorized by court order who is 18 years of age or older.

(b) *Method of Service.* Citation must be served by:

(1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or

(2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.

(c) *Service Fees.* A plaintiff must pay all fees for service unless the plaintiff has filed a sworn statement of inability to pay the fees with the court. If the plaintiff has filed a sworn statement of inability to pay, the plaintiff must arrange for the citation to be served by a sheriff, constable, or court clerk.

(d) *Service on Sunday.* A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.

(e) *Alternative Service of Citation.* If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified under order of the Supreme Court, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:

(1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or

(2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.

(f) *Service by Publication.* In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION; RETURN OF SERVICE

(a) *Endorsement; Execution; Return.* The officer or authorized person to whom process is delivered must:

(1) endorse on the process the date and hour on which he or she received it;

(2) execute and return the same without delay; and

(3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.

(b) *Contents of Return.* The return, together with any document to which it is attached, must include the following information:

(1) the case number and case name;

(2) the court in which the case is filed;

(3) a description of what was served;

(4) the date and time the process was received for service;

(5) the person or entity served;

(6) the address served;

(7) the date of service or attempted service;

(8) the manner of delivery of service or attempted service;

(9) the name of the person who served or attempted service;

(10) if the person named in (9) is a process server certified under Supreme Court Order, his or her identification number and the expiration date of his or her certification; and

(11) any other information required by rule or law.

(c) *Citation by Mail.* When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.

(d) *Failure to Serve.* When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.

(e) *Signature.* The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is (First) (Middle) (Last) , my date of birth is (Month) (Day), (Year) , and my address is (Street), (City), (State) (Zip Code), (Country) . I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the __ day of (Month) , (Year) .

Declarant "

(f) *Alternative Service.* Where citation is executed by an alternative method as authorized by 501.2(e), proof of service must be made in the manner ordered by the court.

(g) *Filing Return.* The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.

(h) *Prerequisite for Default Judgment.* No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 501.2(e), has been on file with the clerk of the court 3 days, exclusive of the day of filing and the day of judgment.

RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION

(a) *Method of Service.* Other than a citation or oral motions made during trial or when all parties are present, every notice required by these rules, and every pleading, plea, motion, application to the court for an order, or other form of request, must be served on all other parties in one of the following ways:

(1) In person. A copy may be delivered to the party to be served, or the party's duly authorized agent or attorney of record, in person or by agent.

(2) Mail or courier. A copy may be sent by courier-receipted delivery or by certified or registered mail, to the party's last known address. Service by certified or registered mail is complete when the document is properly addressed and deposited in the United States mail, postage prepaid.

(3) Fax. A copy may be faxed to the recipient's current fax number. Service by fax after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.

(5) Other. A copy may be delivered in any other manner directed by the court.

(b) *Timing.* If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any hearing requested by a party must be served on all other parties not less than 3 days before the time specified for the hearing.

(c) *Who May Serve.* Documents other than a citation may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify.

(d) *Certificate of Service.* The party or the party's attorney of record must include in writing on all documents filed a signed statement describing the manner in which the document was served on the other party or parties and the date of service. A certificate by a party or the party's attorney of record, or the return of the officer, or the sworn statement of any other person showing service of a notice is proof of service.

(e) *Failure to Serve.* A party may offer evidence or testimony that a notice or document was not received, or, if service was by mail, that it was not received within 3 days from the date of mailing, and upon so finding, the court may extend the time for taking the action required of the party or grant other relief as it deems just.

RULE 502. INSTITUTION OF SUIT

RULE 502.1. PLEADINGS AND MOTIONS MUST BE WRITTEN, SIGNED, AND FILED

Except for oral motions made during trial or when all parties are present, every pleading, plea, motion, application to the court for an order, or other form of request must be written and signed by the party or its attorney and must be filed with the court. A document may be filed with the court by personal or commercial delivery, by mail, or electronically, if the court allows electronic filing.

RULE 502.2. PETITION

(a) *Contents.* To initiate a lawsuit, a petition must be filed with the court. A petition must contain:

(1) the name of the plaintiff;

(2) the name, address, telephone number, and fax number, if any, of the plaintiff's attorney, if applicable, or the address, telephone number, and fax number, if any, of the plaintiff;

(3) the name, address, and telephone number, if known, of the defendant;

(4) the amount of money, if any, the plaintiff seeks;

(5) a description and claimed value of any personal property the plaintiff seeks;

(6) a description of any other relief requested;

(7) the basis for the plaintiff's claim against the defendant; and

(8) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

(b) *Justice Court Civil Case Information Sheet.* A justice court civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of a petition and must be signed by the plaintiff or the plaintiff's attorney. The justice court civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right. The court may not reject a pleading because the pleading is not accompanied by a justice court civil case information sheet.

RULE 502.3. FEES; INABILITY TO PAY

(a) *Fees and Statement of Inability to Pay.* On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a sworn statement of inability to pay. Upon filing the statement, the clerk must docket the action, issue citation, and provide any other customary services.

(b) *Contents of Statement of Inability to Pay.*

(1) The statement must contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses.

(2) The statement must contain the following: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct." The statement must be sworn before a notary public or other officer authorized to administer oaths or be signed under penalty of perjury.

(c) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services because of the party's indigence, without contingency, and the attorney is providing services either directly

or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA funded program screened the party for income eligibility under the IOLTA income guidelines. A party's statement of inability to pay accompanied by an attorney's IOLTA certificate may not be contested under (d).

(d) *Contest.* Unless an IOLTA certificate is filed, the defendant may file a contest of the statement of inability to pay at any time within 7 days after the day the defendant's answer is due. If the statement attests to receipt of government entitlement based on indigence, the statement may only be contested with regard to the veracity of the attestation. If contested, the judge must hold a hearing to determine the plaintiff's ability to pay. At the hearing, the burden is on the party who filed the statement to prove its inability to pay. The judge may, regardless of whether the defendant contests the statement, examine the statement and conduct a hearing to determine the plaintiff's ability to pay. If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

RULE 502.4. VENUE -- WHERE A LAWSUIT MAY BE BROUGHT

(a) *Applicable Law.* Laws specifying the venue--the county and precinct where a lawsuit may be brought--are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code, which is available online and for examination during the court's business hours.

(b) *General Rule.* Generally, a defendant in a small claims case as described in Rule 500.3(a) or a debt claim case as described in Rule 500.3(b) is entitled to be sued in one of the following venues:

(1) the county and precinct where the defendant resides;

(2) the county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred;

(3) the county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or

(4) the county and precinct where the property is located, in a suit to recover personal property.

(c) *Non-Resident Defendant; Defendant's Residence Unknown.* If the defendant is a non-resident of Texas, or if defendant's residence is unknown, the plaintiff may file the suit in the county and precinct where the plaintiff resides.

(d) *Motion to Transfer Venue.* If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant's answer is filed, and must contain a sworn statement that the venue chosen by the plaintiff is improper and a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to name a county and precinct, the court must instruct the defendant to do so and allow the defendant 7 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

(1) *Procedure.*

(A) Judge to Set Hearing. If a defendant files a motion to transfer venue, the judge must set a hearing on the motion.

(B) Response. A plaintiff may file a response to a defendant's motion to transfer venue.

(C) Hearing. The parties may present evidence at the hearing. A witness may testify at a hearing, either in person or, with permission of the court, by means of telephone or an electronic communication system.

(D) Judge's Decision. If the motion is granted, the judge must sign an order designating the court to which the case will be transferred. If the motion is denied, the case will be heard in the court in which the plaintiff initially filed suit.

(E) Review. Motions for rehearing and interlocutory appeals of the judge's ruling on venue are not permitted.

(F) Time for Trial of the Case. No trial may be held until at least the 14th day after the judge's ruling on the motion to transfer venue.

(G) Order. An order granting a motion to transfer venue must state the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the case, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and, if the case is transferred to a different county, that the plaintiff has 14 days after receiving the notice to pay the filing fee in the new court, or file a sworn statement of inability to pay. The plaintiff is not entitled to a refund of any fees already paid. Failure to pay the fee or file a sworn statement of inability to pay will result in dismissal of the case without prejudice.

(e) *Fair Trial Venue Change.* If a party believes it cannot get a fair trial in a specific precinct or before a specific judge, the party may file a sworn motion stating such, supported by the sworn statements of two other credible persons, and specifying if the party is requesting a change of location or a change of judge. Except for good cause shown, this motion must be filed no less than 7 days before trial. If the party seeks a change of judge, the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. If the party seeks a change in location, the case must be transferred to the nearest justice court in the county that is not subject to the same or some other disqualification. If there is only one justice of the peace precinct in the county, then the judge must exchange benches with another qualified justice of the peace, or if no judge is available to exchange benches, the county judge must appoint a visiting judge to hear the case. In cases where exclusive jurisdiction is within a specific precinct, as in eviction cases, the only remedy available is a change of judge. A party may apply for relief under this rule only one time in any given lawsuit.

(f) *Transfer of Venue by Consent.* On the written consent of all parties or their attorneys, filed with the court, venue must be transferred to the court of any other justice of the peace of the county, or any other county.

RULE 502.5. ANSWER

(a) *Requirements.* A defendant must file with the court a written answer to a lawsuit as directed by the citation and must also serve a copy of the answer on the plaintiff. The answer must contain:

(1) the name of the defendant;

(2) the name, address, telephone number, and fax number, if any, of the defendant's attorney, if applicable, or the address, telephone number, and fax number, if any, of the defendant; and

(3) if the defendant consents to email service, a statement consenting to email service and email contact information.

(b) *General Denial.* An answer that denies all of the plaintiff's allegations without specifying the reasons is sufficient to constitute an answer or appearance and does not bar the defendant from raising any defense at trial.

(c) *Answer Docketed.* The defendant's appearance must be noted on the court's docket.

(d) *Due Date.* Unless the defendant is served by publication, the defendant's answer is due by the end of the 14th day after the day the defendant was served with the citation and petition, but

(1) if the 14th day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; and

(2) if the 14th day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court's next business day.

(e) *Due Date When Defendant Served by Publication.* If a defendant is served by publication, the defendant's answer is due by the end of the 42nd day after the day the citation was issued, but

(1) if the 42nd day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday; and

(2) if the 42nd day falls on a day during which the court is closed before 5:00 p.m., the answer is due on the court's next business day.

RULE 502.6. COUNTERCLAIM; CROSS-CLAIM; THIRD PARTY CLAIM

(a) *Counterclaim.* A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not related to the claims in the plaintiff's petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.

(b) *Cross-Claim.* A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.

(c) *Third Party Claim.* A defendant seeking to bring another party into a lawsuit who may be liable for all or part of the plaintiff's claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a sworn statement of inability to pay the fees. A citation must be issued and served as provided by Rule 501.2.

RULE 502.7. AMENDING AND CLARIFYING PLEADINGS

(a) *Amending Pleadings.* A party may withdraw something from or add something to a pleading, as long as the amended pleading is filed and served as provided by Rule 501.4 not less than 7 days before trial. The court may allow a pleading to be amended less than 7 days before trial if the amendment will not operate as a surprise to the opposing party.

(b) *Insufficient Pleadings.* A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the pleading is sufficient to place all parties on notice of the issues in the lawsuit, and may hold a hearing to make that determination. If the court determines a pleading is insufficient, the court must order the party to amend the pleading and set a date by which the party must amend. If a party fails to comply with the court's order, the pleading may be stricken.

RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 503.1. IF DEFENDANT FAILS TO ANSWER

(a) *Default Judgment.* If the defendant fails to file an answer by the date stated in Rule 502.5, the judge must ensure that service was proper, and may hold a hearing for this purpose. If it is determined that service was proper, the judge must render a default judgment in the following manner:

(1) *Claim Based on Written Document.* If the claim is based on a written document signed by the defendant, and a copy of the document has been filed with the court and served on the defendant, along with a sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for, the judge must render judgment for the plaintiff in the requested amount, without any necessity for a hearing. The plaintiff's attorney may also submit affidavits supporting an award of attorney fees to which the plaintiff is entitled, if any.

(2) *Other Cases.* Except as provided in (1), a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The plaintiff must appear at the hearing and provide evidence of its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant. With the permission of the court, a party may appear at a hearing by means of telephone or an electronic communication system.

(b) *Appearance.* If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial as described in Rule 503.3.

(c) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

(d) *Notice.* The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed. Failure to comply with the provisions of this rule does not affect the finality of the judgment.

RULE 503.2. SUMMARY DISPOSITION

(a) *Motion.* A party may file a sworn motion for summary disposition of all or part of a claim or defense without a trial. The motion must set out all supporting facts. All documents on which the motion relies must be attached. The motion must be granted if it shows that:

(1) there are no genuinely disputed facts that would prevent a judgment in favor of the party;

(2) there is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or

(3) there is no evidence of one or more essential elements of the plaintiff's claim.

(b) *Response.* The party opposing the motion may file a sworn written response to the motion.

(c) *Hearing.* The court must not consider a motion for summary disposition until it has been on file for at least 14 days. The judge may consider evidence offered by the parties at the hearing. By agreement of the parties, the judge may decide the motion and response without a hearing.

(d) *Order.* The judge may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just.

RULE 503.3. SETTINGS AND NOTICE; POSTPONING TRIAL

(a) *Settings and Notice.* After the defendant answers, the case will be set on a trial docket at the discretion of the judge. The court must send a notice of the date, time, and place of this setting to all parties at their address of record no less than 45 days before the setting date, unless the judge determines that an earlier setting is required in the interest of justice. Reasonable notice of all subsequent settings must be sent to all parties at their addresses of record.

(b) *Postponing Trial.* A party may file a motion requesting that the trial be postponed. The motion must state why a postponement is necessary. The judge, for good cause, may postpone any trial for a reasonable time.

RULE 503.4. PRETRIAL CONFERENCE

(a) *Conference Set; Issues.* If all parties have appeared in a lawsuit, the court, at any party's request or on its own, may set a case for a pretrial conference. Reasonable notice must be sent to all parties at their addresses of record. Appropriate issues for the pretrial conference include:

(1) discovery;

(2) the amendment or clarification of pleadings;

(3) the admission of facts and documents to streamline the trial process;

(4) a limitation on the number of witnesses at trial;

(5) the identification of facts, if any, which are not in dispute between the parties;

(6) mediation or other alternative dispute resolution services;

(7) the possibility of settlement;

(8) trial setting dates that are amenable to the court and all parties;

(9) the appointment of interpreters, if needed;

(10) the application of a Rule of Civil Procedure not in Part V or a Rule of Evidence; and

(11) any other issue that the court deems appropriate.

(b) *Eviction Cases.* The court must not schedule a pretrial conference in an eviction case if it would delay trial.

RULE 503.5. ALTERNATIVE DISPUTE RESOLUTION

(a) *State Policy.* The policy of this state is to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process.

(b) *Eviction Cases.* The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

RULE 503.6. TRIAL

(a) *Docket Called.* On the day of the trial setting, the judge must call all of the cases set for trial that day.

(b) *If Plaintiff Fails to Appear.* If the plaintiff fails to appear when the case is called for trial, the judge may postpone or dismiss the suit.

(c) *If Defendant Fails to Appear.* If the defendant fails to appear when the case is called for trial, the judge may postpone the case, or may proceed to take evidence. If the plaintiff proves its case, judgment must be awarded for the relief proven. If the plaintiff fails to prove its case, judgment must be rendered against the plaintiff.

RULE 504. JURY

RULE 504.1. JURY TRIAL DEMANDED

(a) *Demand.* Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.

(b) *Jury Fee.* Unless otherwise provided by law, a party demanding a jury must pay a fee of $22.00 or must file a sworn statement of inability to pay the fee at or before the time the party files a written request for a jury.

(c) *Withdrawal of Demand.* If a party who demands a jury and pays the fee withdraws the demand, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee.

(d) *No Demand.* If no party timely demands a jury and pays the fee, the judge will try the case without a jury.

RULE 504.2. EMPANELING THE JURY

(a) *Drawing Jury and Oath.* If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box, mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

(b) *Oath.* After the draw, the judge must swear the panel as follows: "You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror."

(c) *Questioning the Jury.* The judge, the parties, or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

(d) *Challenge for Cause.* A party may challenge any juror for cause. A challenge for cause is an objection made to a juror alleging some fact, such as a bias or prejudice, that disqualifies the juror from serving in the case or that renders the juror unfit to sit on the jury. The challenge must be made during jury questioning. The party must explain to the judge why the juror should be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.

(e) *Challenges Not for Cause.* After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.

(f) *The Jury.* After all challenges, the first 6 prospective jurors remaining on the list constitute the jury to try the case.

(g) *If Jury Is Incomplete.* If challenges reduce the number of prospective jurors below 6, the judge may direct the sheriff or constable to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.

(h) *Jury Sworn.* When the jury has been selected, the judge must require them to take substantially the following oath: "You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented."

RULE 504.3. JURY NOT CHARGED

The judge must not charge the jury.

RULE 504.4. JURY VERDICT FOR SPECIFIC ARTICLES

When the suit is for the recovery of specific articles and the jury finds for the plaintiff, the jury must assess the value of each article separately, according to the evidence presented at trial.

RULE 505. JUDGMENT; NEW TRIAL

RULE 505.1. JUDGMENT

(a) *Judgment Upon Jury Verdict.* Where a jury has returned a verdict, the judge must announce the verdict in open court, note it in the court's docket, and render judgment accordingly. The judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Case Tried by Judge.* When a case has been tried before the judge without a jury, the judge must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly.

(c) *Form.* A judgment must:

(1) clearly state the determination of the rights of the parties in the case;

(2) state who must pay the costs;

(3) be signed by the judge; and

(4) be dated the date of the judge's signature.

(d) *Costs.* The judge must award costs allowed by law to the successful party.

(e) *Judgment for Specific Articles.* Where the judgment is for the recovery of specific articles, the judgment must order that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed by the judge or jury with interest at the prevailing post-judgment interest rate.

RULE 505.2. ENFORCEMENT OF JUDGMENT

Justice court judgments are enforceable in the same method as in county and district court, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

RULE 505.3. MOTION TO SET ASIDE; MOTION TO REINSTATE; MOTION FOR NEW TRIAL

(a) *Motion to Reinstate after Dismissal.* A plaintiff whose case is dismissed may file a motion to reinstate the case no later than 14 days after the dismissal order is signed. The plaintiff must serve the defendant with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may reinstate the case for good cause shown.

(b) *Motion to Set Aside Default.* A defendant against whom a default judgment is granted may file a motion to set aside the judgment no later than 14 days after the judgment is signed. The defendant must serve the plaintiff with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The court may set aside the judgment and set the case for trial for good cause shown.

(c) *Motion for New Trial.* A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

(d) *Motion Not Required.* Failure to file a motion under this rule does not affect a party's right to appeal the underlying judgment.

(e) *Motion Denied as a Matter of Law.* If the judge has not ruled on a motion to set aside, motion to reinstate, or motion for new trial, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the judgment was signed.

RULE 506. APPEAL

RULE 506.1. APPEAL

(a) *How Taken; Time.* A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied.

(b) *Amount of Bond; Sureties; Terms.* A plaintiff must file a $500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Cash Deposit in Lieu of Bond.* In lieu of filing a bond, an appellant may deposit with the clerk of the court cash in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(d) *Sworn Statement of Inability to Pay.*

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3(b) and may be the same one that was filed with the petition.

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 7 days after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 7 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 14 days and hear the contest de novo, as if there had been no previous hearing, and if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.

(e) *Notice to Other Parties Required.* If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(f) *No Default on Appeal Without Compliance With Rule.* The county court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.

(g) *No Dismissal of Appeal Without Opportunity for Correction.* An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.

(h) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

(i) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

RULE 506.2. RECORD ON APPEAL

When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case.

RULE 506.3. TRIAL DE NOVO

The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 506.4. WRIT OF CERTIORARI

(a) *Application.* Except in eviction cases, after final judgment in a case tried in justice court, a party may apply to the county court for a writ of certiorari.

(b) *Grounds.* An application must be granted only if it contains a sworn statement setting forth facts showing that either:

(1) the justice court did not have jurisdiction; or

(2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant's own inexcusable neglect.

(c) *Bond, Cash Deposit, or Sworn Statement of Indigency to Pay Required.* If the application is granted, a writ of certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a sworn statement of indigency that complies with Rule 145.

(d) *Time for Filing.* An application for writ of certiorari must be filed within 90 days after the date the final judgment is signed.

(e) *Contents of Writ.* The writ of certiorari must command the justice court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the transcript of the proceedings in the justice court, together with the original papers and a bill of costs, to the proper court.

(f) *Clerk to Issue Writ and Citation.* When the application is granted and the bond, cash deposit, or sworn statement of indigency have been filed, the clerk must issue a writ of certiorari to the justice court and citation to the adverse party.

(g) *Stay of Proceedings.* When the writ of certiorari is served on the justice court, the court must stay further proceedings on the judgment and comply with the writ.

(h) *Cause Docketed.* The action must be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

(i) *Motion to Dismiss.* Within 30 days after the service of citation on the writ of certiorari, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond. If the certiorari is dismissed, the judgment must direct the justice court to proceed with the execution of the judgment below.

(j) *Amendment of Bond or Oath.* The affidavit or bond may be amended at the discretion of the court in which it is filed.

(k) *Trial De Novo.* The case must be tried de novo in the county court and judgment must be rendered as in cases appealed from justice courts. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.

RULE 507. ADMINISTRATIVE RULES FOR JUDGES AND COURT PERSONNEL

RULE 507.1. PLENARY POWER

A justice court loses plenary power over a case when an appeal is perfected or if no appeal is perfected, 21 days after the later of the date judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied.

RULE 507.2. FORMS

The court may provide forms to enable a party to file documents that comply with these rules. No party may be forced to use the court's forms.

RULE 507.3. DOCKET AND OTHER RECORDS

(a) *Docket.* Each judge must keep a civil docket in a permanent record containing the following information:

(1) the title of all suits commenced before the court;

(2) the date when the first process was issued against the defendant, when returnable, and the nature of that process;

(3) the date when the parties, or either of them, appeared before the court, either with or without a citation;

(4) a description of the petition and any documents filed with the petition;

(5) every adjournment, stating at whose request and to what time;

(6) the date of the trial, stating whether the same was by a jury or by the judge;

(7) the verdict of the jury, if any;

(8) the judgment signed by the judge and the date the judgment was signed;

(9) all applications for setting aside judgments or granting new trials and the orders of the judge thereon, with the date;

(10) the date of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs and, when any execution is returned, the date of the return and the manner in which it was executed; and

(11) all stays and appeals that may be taken, and the date when taken, the amount of the bond and the names of the sureties.

(b) *Other Records.* The judge must also keep copies of all documents filed; other dockets, books, and records as may be required by law or these rules; and a fee book in which all costs accruing in every suit commenced before the court are taxed.

(c) *Form of Records.* All records required to be kept under this rule may be maintained electronically.

RULE 507.4. ISSUANCE OF WRITS

Every writ from the justice courts must be in writing and be issued and signed by the judge officially. The style thereof must be "The State of Texas." It must, except where otherwise specially provided by law or these rules, be directed to the person or party upon whom it is to be served, be made returnable to the court, and note the date of its issuance.

RULE 508. DEBT CLAIM CASES

RULE 508.1. APPLICATION

Rule 508 applies to a claim for the recovery of a debt brought by an assignee of a claim, a financial institution, a debt collector or collection agency, or a person or entity primarily engaged in the business of lending money at interest.

RULE 508.2. PETITION

(a) *Contents.* In addition to the information required by Rule 502.2, a petition filed in a lawsuit governed by this rule must contain the following information:

(1) Credit Accounts. In a claim based upon a credit card, revolving credit, or open account, the petition must state:

(A) the account name or credit card name;

(B) the account number (which may be masked);

(C) the date of issue or origination of the account, if known;

(D) the date of charge-off or breach of the account, if known;

(E) the amount owed as of a date certain; and

(F) whether the plaintiff seeks ongoing interest.

(2) Personal and Business Loans. In a claim based upon a promissory note or other promise to pay a specific amount as of a date certain, the petition must state:

(A) the date and amount of the original loan;

(B) whether the repayment of the debt was accelerated, if known;

(C) the date final payment was due;

(D) the amount due as of the final payment date;

(E) the amount owed as of a date certain; and

(F) whether plaintiff seeks ongoing interest.

(3) Ongoing Interest. If a plaintiff seeks ongoing interest, the petition must state:

(A) the effective interest rate claimed;

(B) whether the interest rate is based upon contract or statute; and

(C) the dollar amount of interest claimed as of a date certain.

(4) Assigned Debt. If the debt that is the subject of the claim has been assigned or transferred, the petition must state:

(A) that the debt claim has been transferred or assigned;

(B) the date of the transfer or assignment;

(C) the name of any prior holders of the debt; and

(D) the name or a description of the original creditor.

RULE 508.3. DEFAULT JUDGMENT

(a) *Generally.* If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the plaintiff's proof of the amount of damages.

(b) *Proof of the Amount of Damages.*

(1) Evidence Must Be Served or Submitted. Evidence of plaintiff's damages must either be attached to the petition and served on the defendant or submitted to the court after defendant's failure to answer by the answer date.

(2) Form of Evidence. Evidence of plaintiff's damages may be offered in a sworn statement or in live testimony. The evidence offered may include documentary evidence.

(3) Establishment of the Amount of Damages. The amount of damages is established by evidence:

(A) that the account or loan was issued to the defendant and the defendant is obligated to pay it;

(B) that the account was closed or the defendant breached the terms of the account or loan agreement;

(C) of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and

(D) that the plaintiff owns the account or loan and, if applicable, how the plaintiff acquired the account or loan.

(4) Documentary Evidence Offered By Sworn Statement. Documentary evidence may be considered if it is attached to a sworn statement made by the plaintiff or its representative, a prior holder of the debt or its representative, or the original creditor or its representative, that attests to the following:

(A) the documents were kept in the regular course of business;

(B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;

(C) the documents were created at or near the time or reasonably soon thereafter; and

(D) the documents attached are the original or exact duplicates of the original.

(5) Consideration of Sworn Statement. A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation indicate lack of trustworthiness. But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

(c) *Hearing.* The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of its damages and should do so to avoid undue expense and delay. Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages. If the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

(d) *Appearance.* If the defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not render a default judgment and must set the case for trial.

(e) *Post-Answer Default.* If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.

RULE 509. REPAIR AND REMEDY CASES

RULE 509.1. APPLICABILITY OF RULE

Rule 509 applies to a lawsuit filed in a justice court by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) *Contents of Petition.* The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;

(C) whether the tenant's lease is in writing and requires written notice;

(D) whether the notice was in writing or oral;

(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and

(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:

(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and

(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed $10,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) *Copies.* The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) *Forms and Amendments.* A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER

(a) *Issuance.* When the tenant files a written petition with a justice court, the judge must immediately issue citation directed to the landlord, commanding the landlord to appear before such judge at the time and place named in the citation.

(b) *Appearance Date; Answer.* The appearance date on the citation must not be less than 10 days nor more than 21 days after the petition is filed. For purposes of this rule, the appearance date on the citation is the trial date. The landlord may, but is not required to, file a written answer on or before the appearance date.

RULE 509.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF CITATION

(a) *Service and Return of Citation.* The sheriff, constable, or other person authorized by Rule 501.2 who receives the citation must serve the citation by delivering a copy of it, along with a copy of the petition and any attachments, to the landlord at least 6 days before the appearance date. At least one day before the appearance date, the person serving the citation must file a return of service with the court that issued the citation. The citation must be issued, served, and returned in like manner as ordinary citations issued from a justice court.

(b) *Alternative Service of Citation.*

(1) If the petition does not include the landlord's name and business street address, or if, after making diligent efforts on at least two occasions, the officer or authorized person is unsuccessful in serving the citation on the landlord under (a), the officer or authorized person must serve the citation by delivering a copy of the citation, petition, and any attachments to:

(A) the landlord's management company if the tenant has received written notice of the name and business street address of the landlord's management company; or

(B) if (b)(1)(A) does not apply and the tenant has not received the landlord's name and business street address in writing, the landlord's authorized agent for service of process, which may be the landlord's management company, on-premise manager, or rent collector serving the residential rental property.

(2) If the officer or authorized person is unsuccessful in serving citation under (b)(1) after making diligent efforts on at least two occasions at either the business street address of the landlord's management company, if (b)(1)(A) applies, or at each available business street address of the landlord's authorized agent for service of process, if (b)(1)(B) applies, the officer or authorized person must execute and file in the justice court a sworn statement that the officer or authorized person made diligent efforts to serve the citation on at least two occasions at all available business street addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the residential rental property, providing the times, dates, and places of each attempted service. The judge may then authorize the officer or authorized person to serve citation by:

(A) delivering a copy of the citation, petition, and any attachments to someone over the age of 16 years, at any business street address listed in the petition, or, if nobody answers the door at a business street address, either placing the citation, petition, and any attachments through a door mail chute or slipping them under the front door, and if neither of these latter methods is practical, affixing the citation, petition, and

any attachments to the front door or main entry to the business street address;

(B) within 24 hours of complying with (b)(2)(A), sending by first class mail a true copy of the citation, petition, and any attachments addressed to the landlord at the landlord's business street address provided in the petition; and

(C) noting on the return of the citation the date of delivery under (b)(2)(A) and the date of mailing under (b)(2)(B).

The delivery and mailing to the business street address under (b)(2)(A)-(B) must occur at least 6 days before the appearance date. At least one day before the appearance date, a return of service must be completed and filed in accordance with Rule 501.3 with the court that issued the citation. It is not necessary for the tenant to request the alternative service authorized by this rule.

RULE 509.5. DOCKETING AND TRIAL; FAILURE TO APPEAR

(a) *Docketing and Trial.* The case must be docketed and tried as other cases. The judge may develop the facts of the case in order to ensure justice.

(b) *Failure to Appear.*

(1) If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render judgment against the landlord in accordance with the evidence.

(2) If the tenant fails to appear for trial, the judge may dismiss the lawsuit.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

(a) *Amount.* Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed $10,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a lawsuit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) *Form and Content.*

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) *Issuance and Service.* The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must promptly file a return of service in the justice court.

(d) *Failure to Comply.* If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Texas Government Code.

RULE 509.7. COUNTERCLAIMS

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory counterclaims may be brought in a separate suit. Any potential causes of action, including a compulsory counterclaim, that are not asserted because of this rule are not precluded.

RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL ON APPEAL

(a) *Time and Manner.* Either party may appeal the decision of the justice court to a statutory county court or, if there is no statutory county court with jurisdiction, a county court or district court with jurisdiction by filing a written notice of appeal with the justice court within 21 days after the date the judge signs the judgment. If the judgment is amended in any respect, any party has the right to appeal within 21 days after the date the judge signs the new judgment, in the same manner set out in this rule.

(b) *Perfection.* The posting of an appeal bond is not required for an appeal under this rule, and the appeal is considered perfected with the filing of a notice of appeal. Otherwise, the appeal is in the manner provided by law for appeal from a justice court.

(c) *Effect.* The timely filing of a notice of appeal stays the enforcement of any order to repair or remedy a condition or reduce the tenant's rent, as well as any other actions.

(d) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

(e) *Trial on Appeal.* On appeal, the parties are entitled to a trial de novo. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. Either party is entitled to trial by jury on timely request and payment of a fee, if required. An appeal of a judgment of a justice court under these rules takes precedence in the

county court and may be held at any time after the eighth day after the date the transcript is filed in the county court.

RULE 509.9. EFFECT OF WRIT OF POSSESSION

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable.

RULE 510. EVICTION CASES

RULE 510.1. APPLICATION

Rule 510 applies to a lawsuit to recover possession of real property under Chapter 24 of the Texas Property Code.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES

Rule 500.5 applies to the computation of time in an eviction case. But if a document is filed by mail and not received by the court by the due date, the court may take any action authorized by these rules, including issuing a writ of possession requiring a tenant to leave the property.

RULE 510.3. PETITION

(a) *Contents.* In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

(1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;

(2) a description of the facts and the grounds for eviction;

(3) a description of when and how notice to vacate was delivered;

(4) the total amount of rent due and unpaid at the time of filing, if any; and

(5) a statement that attorney fees are being sought, if applicable.

(b) *Where Filed.* The petition must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

(c) *Defendants Named.* If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

(d) *Claim for Rent.* A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

(e) *Only Issue.* The court must adjudicate the right to actual possession and not title. Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION

(a) *Issuance of Citation; Contents.* When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

(1) be styled "The State of Texas";

(2) be signed by the clerk under seal of court or by the judge;

(3) contain the name, location, and address of the court;

(4) state the date of filing of the petition;

(5) state the date of issuance of the citation;

(6) state the file number and names of parties;

(7) state the plaintiff's cause of action and relief sought;

(8) be directed to the defendant;

(9) state the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;

(10) state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed;

(11) notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;

(12) inform the defendant that, upon timely request and payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by a jury;

(13) contain all warnings required by Chapter 24 of the Texas Property Code; and

(14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) *Service and Return of Citation.*

(1) Who May Serve. Unless otherwise authorized by written court order, citation must be served by a sheriff or constable.

(2) Method of Service. The constable, sheriff, or other person authorized by written court order receiving the citation must execute it by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.

(3) Return of Service. At least one day before the day set for trial, the constable, sheriff, or other person authorized by written court order must complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation.

(c) *Alternative Service by Delivery to the Premises.*

(1) When Allowed. The citation may be served by delivery to the premises if:

(A) the constable, sheriff, or other person authorized by written court order is unsuccessful in serving the citation under (b);

(B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

(C) the constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

(2) Authorization. The judge must promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

(3) Method. If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at least 6 days before the day set for trial:

(A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and

(B) deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.

(4) Notation on Return. The constable, sheriff, or other person authorized by written court order must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION

(a) *Immediate Possession Bond.* The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) *Notice to Defendant.* The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) *Time for Issuance and Execution of Writ.* If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately upon demand and payment of any required fees. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(d) *Effect of Appearance.* If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later.

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT

(a) *Trial Date and Answer.* The defendant must appear for trial on the day set for trial in the citation. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) *Default Judgment.* If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, and proof of service has been filed in accordance with Rule 510.4, the allegations of the complaint must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly.

(c) *Notice of Default.* When a default judgment is signed, the clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises.

RULE 510.7. TRIAL

(a) *Trial.* An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 510.4 has been obtained.

(b) *Jury Trial Demanded.* Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a sworn statement of inability to pay the jury fee. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) *Limit on Postponement.* Trial in an eviction case must not be postponed for more than 7 days total unless both parties agree in writing.

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL

(a) *Judgment Upon Jury Verdict.* Where a jury has returned a verdict, the judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) *Judgment for Plaintiff.* If the judgment is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent as of the date of entry of judgment, if any, and attorney fees if recoverable by law.

(c) *Judgment for Defendant.* If the judgment is in favor of the defendant, the judge must render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

(d) *Writ.* If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees.

(1) Time to Issue. Except as provided by Rule 510.5, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later. A writ of possession may not issue more than 60 days after a judgment for possession is signed. For good cause, the court may extend the deadline for issuance to 90 days after a judgment for possession is signed.

(2) Time to Execute. A writ of possession may not be executed after the 90th day after a judgment for possession is signed.

(3) Effect of Appeal. A writ of possession must not issue if an appeal is perfected and, if applicable, rent is paid into the registry, as required by these rules.

(e) *No Motion For New Trial.* No motion for new trial may be filed.

RULE 510.9. APPEAL

(a) *How Taken; Time.* A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 5 days after the judgment is signed.

(b) *Amount of Security; Terms.* The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Sworn Statement of Inability to Pay.*

(1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3(b).

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 5 days of that court's written order. The justice court must then

forward all related documents to the county court for resolution. The county court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

(4) If No Appeal or If Appeal Overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(5) Payment of Rent in Nonpayment of Rent Appeals.

(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay, the justice court must provide to the defendant a written notice at the time the statement is filed that contains the following information in bold or conspicuous type:

(i) the amount of the initial deposit of rent, equal to one rental period's rent under the terms of the rental agreement, that the defendant must pay into the justice court registry;

(ii) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(iii) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within 5 days of the date the sworn statement of inability to pay is filed; and

(iv) a statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing a writ of possession without hearing.

(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(i) Within 5 days of the date that the defendant files a sworn statement of inability to pay, it must pay into the justice court registry the amount set forth in the notice provided at the time the defendant filed the statement. If the defendant was provided with notice and fails to pay the designated amount into the justice court registry within 5 days, and the transcript has not been transmitted to the county clerk, the plaintiff is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.

(ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into the county court registry within 5 days of the rental due date under the terms of the rental agreement.

(iii) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.

(iv) If the defendant fails to pay the designated amount into the court registry within the time limits prescribed by these rules, the plaintiff may file a sworn motion that the defendant is in default in county court. The plaintiff must notify the defendant of the motion and the hearing date. Upon a showing that the defendant is in default, the court must issue a writ of possession.

(v) The plaintiff may withdraw any or all rent in the county court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.

(vi) All hearings and motions under this subparagraph are entitled to precedence in the county court.

(d) *Notice to Other Parties Required.* If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(e) *No Default on Appeal Without Compliance With Rule.* No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

(f) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule.

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO

(a) *Preparation and Transmission of Record.* Unless otherwise provided by law or these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgment and must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the court registry, including sums tendered pursuant to Rule 510.9(c)(5)(B).

(b) *Docketing; Notice.* The county clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case. The notice must advise the defendant that it must file a written answer in the county court within 8 days if one was not filed in the justice court.

(c) *Trial De Novo.* The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the county court.

RULE 510.11. DAMAGES ON APPEAL

On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL

An eviction case appealed to county court will be subject to trial at any time after the expiration of 8 days after the date the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, it must be taken to constitute his appearance and answer in the county court and may be amended as in other cases. If

the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

RULE 510.13. WRIT OF POSSESSION ON APPEAL

The writ of possession, or execution, or both, will be issued by the clerk of the county court according to the judgment rendered, and the same will be executed by the sheriff or constable, as in other cases. The judgment of the county court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the county court pursuant to Section 24.007 of the Texas Property Code.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER *(FOR CLERK USE ONLY)*: _____

STYLED _____
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		**2. Names of parties in case:**
Name:	Telephone:	Plaintiff(s):
Address:	Fax:	Defendant(s):
City/State/Zip:	State Bar No:	[Attach additional page as necessary to list all parties]
Email:		
Signature:		

3. Indicate case type, or identify the most important issue in the case *(select only 1)*:

☐ ***Debt Claim***: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ ***Eviction:*** An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.
☐ ***Repair and Remedy***: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ ***Small Claims:*** A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.

TRD-201301528
Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: April 16, 2013

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Bay City, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Bay City Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Bay City. TxDOT CSJ No.: 1313BAYCY. Scope: Provide engineering/design services for:

1. Pavement condition and strength determination

2. Rehabilitate hangar access taxiways, Runway 13-31, parallel taxiway and cross taxiway, Apron, and Apron taxiway

3. Mark Runway 13-31, parallel taxiway and cross taxiway

4. Reconstruct entrance road, terminal auto parking and hangar access road

5. Repair drainage north taxiway

The DBE goal for the current project is 7 percent. TxDOT Project Manager is Stephanie Kleiber.

Future scope work items for engineering/design services within the next five years may include the following:

Replace/reconstruct T-hangar building number 1; construct 100 by 100 foot hangar with office; install emergency generator; perimeter fencing and gates for hangar access; relocate AWOS: install MALS to Runway 13; install PAPI 4 Runway 31; upgrade Runway 13 to PAPI-4; reconstruct/relocate parallel taxiway to 240 foot width separation and expand apron.

The City of Bay City reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Bay City Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 21, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Stephanie Kleiber, P.E., Project Manager.

TRD-201301518
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 15, 2013

♦ ♦ ♦

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Nueces County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Nueces County Airport during the course of the next five years through multiple grants.

Current Project: Nueces County. TxDOT CSJ No.: 1313ROBST. Scope: Provide engineering/design services to:

1. Rehabilitate and mark Runway 13-31 and stub taxiway.

2. Rehabilitate turnarounds Runway 13-31

3. Rehab apron and hangar access taxiways

4. Construct additional T-hangars and hangar access pavement

5. Install game fence and gates North East perimeter

The DBE/HUB goal for the current project is 11 percent. TxDOT Project Manager is Eusebio Torres, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

Construct T-hangars; construct maintenance hangar; construct auto parking 10 units; install PAPI-2 Runway 13-31; rehabilitate hangar access taxiways; new runway construction; extend runway and parallel taxiway.

Nueces County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Nueces County." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 21, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects.html under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan. For technical questions, please contact Eusebio Torres, P.E., Project Manager.

TRD-201301519
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 15, 2013

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Notice of Availability - Draft Environmental Impact Statement

The Texas Department of Transportation (TxDOT) is advising the public of the availability of the approved Draft Environmental Impact Statement for the proposed construction on US 281 from Loop 1604 to Borgfeld Drive in Bexar County, Texas. The proposed project is being developed with the Alamo Regional Mobility Authority (Alamo RMA) and the Federal Highway Administration (FHWA).

The US 281 Corridor Project would extend approximately 8 miles, add additional travel lanes, and would include four direct connector ramps that comprise the northern half of the US 281 interchange with Loop 1604. The build alternatives have three funding options: non-toll, toll, and managed lanes. Controlled access is proposed from Loop 1604 to Borgfeld Drive. The social, economic, and environmental impacts of the proposed project have been analyzed in the Draft Environmental Impact Statement.

The need for improvements to US 281 arises from historic and continuing trends in population and employment growth along the US 281 project corridor and within the surrounding areas. This growth generates increasing amounts of vehicle travel, which in turn impedes the function of US 281 to provide regional mobility and local access, leading to lengthy travel delays and a high rate of vehicle crashes. The purpose of the US 281 Corridor Project is to improve mobility and accessibility, enhance safety, and improve community quality of life.

A total of two build alternatives, in addition to the No-Build Alternative, are presented in the Draft Environmental Impact Statement.

A public hearing will be held on Thursday, June 20, 2013 at the San Antonio Shrine Auditorium, 901 North Loop 1604 West, San Antonio, TX 78232. An open house will be held from 5:00 p.m. to 7:00 p.m. to allow for questions and viewing of project exhibits. A formal presentation will begin at 7:00 p.m. followed by a public comment period. Announcements will be published in the *San Antonio Express-News* and *La Prensa.* More information can be found at

http://www.411on281.com/us281eis/.

Copies of the Draft Environmental Impact Statement and other information about the project may be obtained by contacting Ms. Vicki Crnich at TxDOT-ENV at (512) 416-3029 or by email at Vicki.Crnich@txdot.gov. The document is on file and available for review at the following locations: (1) Alamo Regional Mobility Authority, 613 N.W. Loop 410, Suite 100, San Antonio, TX 78216; (2) Texas Department of Transportation, 4615 N.W. Loop 410, San Antonio, TX 78229; (3)

Jacobs Engineering Group, 911 Central Parkway North, Suite 425, San Antonio, TX 78232; (4) Parman Branch Library at Stone Oak, 20735 Wilderness Oak, San Antonio, TX 78258; (5) Brook Hallow Branch Library, 530 Heimer Road, San Antonio, TX 78232; and (6) San Antonio Central Library, 600 Soledad Street, San Antonio, TX 78205.

A digital version of the Draft Environmental Impact Statement may be downloaded from the project website at

http://www.411on281.com/us281eis/.

Copies of the Draft Environmental Impact Statement and other information about the project may also be requested in writing from Jacobs Engineering Group, Attention US 281 EIS Team, 2911 Central Parkway North, Suite 425, San Antonio, TX 78232 or by email at

US281EIS@AlamoRMA.org. CD copies may be obtained free of charge and paper copies for a fee of approximately $630.00.

Comments regarding the Draft Environmental Impact Statement may be submitted to TxDOT-ENV, Attention: Vicki Crnich, 125 E. 11th Street, Austin, TX 78701-2483. Comments will also be accepted by e-mail to

US281EIS@AlamoRMA.org and at

http://www.411on281.com/us281eis/ under Submit Comments. The comment period closes on July 1, 2013.

TRD-201301525
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 16, 2013

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